IN THE

Supreme Court of the United States

October Term, 1976
No. 76-99

OCCIDENTAL LIFE INSURANCE COMPANY OF CALIFORNIA,

Petitioner,

vs.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

Excerpts from

SENATE SUBCOMM. ON LABOR OF THE COMM. ON LABOR AND PUBLIC WELFARE, 92D CONG., 2D SESS., LEGISLATIVE HISTORY OF THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972.

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MINORITY VIEWS ON H.R. 1746

We all agree that, if equal employment opportunity for all Americans is to become a reality, the Equal Employment Opportunity Commission should be given enforcement powers. We are convinced, however, that H.R. 1746 will not accomplish this goal, and thus we must oppose it.

First and foremost, on the premise that anyone charged with violating the law is innocent until proven guilty, we believe that enforcement of our laws can best be effectuated through our courts.

Additionally, we fear that, in view of the estimated 18-month to two-year backlog that currently exists at the EEOC, the intent of H.R. 1746 to expand the EEOC's jurisdiction will serve only to retard and frustrate the purposes and objectives of the Equal Employment Opportunity Act.

Under the procedures of the Committee bill, upon receipt of a charge, the Commission is required to investigate and to find reasonable cause before issuing a formal complaint. In effect, this finding is a presumption of the guilt of the defendant, which subtly shifts the burden of proof from the plaintiff to the defendant. Thus, in practice, if not by law, the defendant is faced with the burden of proving his innocence.

During Committee sessions, we offered amendments to assure that title VII of the Civil Rights Act would be enforced, and that enforcement would be fair and impartial. Our amendments, which were rejected, would permit the EEOC attorneys, if they are unsuccessful in their conciliation and if they found reasonable cause to believe that a violation of the law has taken place, to seek enforcement in Federal district courts.

I. The Major Issue

As indicated above, the most significant issue that separates the majority of the committee from the minority is not whether the EEOC should be given enforcement authority. Rather, the issue is: What procedures will insure the most effective enforcement of the substantive provisions of title VII of the Civil Rights Act of 1964.

By providing the EEOC with authority to issue cease and desist and other remedial orders, the Committee bill would transform this agency into a quasi-judicial body very similar to the National Labor Relations Board.

In the next section we explain and justify our belief that the court approach will be more effective and more expeditious than the administrative approach. We are compelled, however, to point out as well that the authority provided in H.R. 1746 ignores and denies basic American principles.

Under our system of justice, a person charged with violating the law is presumed innocent until proved guilty. In practical effect the Committee bill creates a system that presumes persons charged with certain law violations are guilty until proved innocent. We contend that the EEOC has attained an image as an advocate of civil rights, and properly so. For this very reason, we submit that it cannot be an impartial arbiter of the law. An advocate, by nature, represents one side of an issue. How can he then be asked to apply the law without prejudice?

THE JUDICIAL APPROACH

The direct judicial approach offers greater advantages than the administrative cease and desist approach. While both methods would involve an adversary proceeding before a finder of fact, in the judicial approach the original finder of fact would be the federal district court judge as compared to a hearing officer who is a civil service employee, under the administrative approach.

There are substantial reasons for supporting direct resort to the courts. They include:

A. Timeliness of Relief and Remedy

Contrary to the proponents of the "cease and desist" approach, the district court approach is clearly preferable because relief can be more quickly granted. The pertinent yardstick is the amount of time an aggrieved person must wait before he is afforded relief. Empowering the EEOC to bring court suits will greatly facilitate its ability to implement the law without delay and to bring effective relief to victims of discrimination. If the EEOC prevails before the court, it is entitled to an immediate injunction and other relief to bring about a rapid end to the discriminatory practices. In many instances a relatively simple proof would allow the EEOC to obtain a preliminary injunction pending a full trial of the case.

A close examination of the time factors involved in processing charges before the National Labor Relations Board (which was the model for formulating the enforcement powers given to the EEOC by the Committee bill) and the district courts conclusively establishes that quicker relief can be achieved when the direct court approach is utilized.

It is significant that the Special Subcommittee on Labor opened hearings on May 6, 1971, on a bill (H.R. 7152) to expedite the processes of the National Labor Relations Board, and in the explanatory sheet it distributed it discussed the delay incurred in the six stages of the administrative process which culminated in a court enforced order in the Court of Appeals. The delay was summarized as follows:

> In sum, it can easily take 2½ years from the time a worker walks into a regional Labor Board office with a charge that he has been discharged illegally until the time a court of appeals finally issues an order that he be reinstated to his job with back pay.

Even the 2½ year figure cited appears unduly optimistic in light of recent testimony given before the Special Subcommittee on Labor on

H.R. 7152, on May 12, 1971, by Frank W. McCulloch, former Chairman of the NLRB, about the length of delay between the issuance of a Board decision and a court order. He stated:

> In operation, the lack of such a provision [referring to a self-enforcing provision] has resulted in the build-up of a median time interval of 630 days in enforcement cases, as previously noted, from Board decision to a Court order which for the first time applies the sanctions of the law to a non-complying respondent.

When these time factors are added up, the 18–24 month backlog currently existing at EEOC, the time needed for an administrative proceeding and review by the Commission, plus the 630 day figure currently required to get court enforcement (using the NLRB figure), 3½ to 4 years would appear to be a more correct approximation of the time involved in getting enforcement through the administrative cease and desist approach.

In striking contrast, the 1970 Annual Report of the Director of the Administrative Office of the United States Courts states that ten months was the median time interval from issue to trial for non-jury trials completed in United States District Courts in 1970. Even assuming time for issuance of a decision such forum would clearly be quicker. Moreover, the district courts located in those states which have most of the charges of employment discrimination often have better time records in case handling.

An examination of the Fourth Annual Report of the Equal Employment Opportunity Commission, submitted on July 30, 1970, shows that the top ten states in terms of the number of charges of employment discrimination recommended for investigation are: Texas (1232 charges), Louisiana (1007), Florida (1000), Alabama (734), Tennessee (672), California (546), Georgia (519), Pennsylvania (501), Illinois (334) and New Jersey (306). As federal district courts in such metropolitan areas as New York City and Philadelphia would obviously be much busier than those in less populolus areas, the case handling time factor should therefore, be correlated with the areas where most charges originate.

The median time interval in months for non-jury trials in such states discloses the following:

Texas:
- Northern District, 4 months, Dallas.
- Eastern District, 5 months, Beaumont.
- Southern District, 12 months, Houston.
- Western District, 3 months, San Antonio.

Louisiana:
- Eastern District, 13 months, New Orleans.
- Western District, 13 months, Shreveport.

Florida:
- Northern District, 8 months [1], Tallahassee.
- Middle District, 12 months, Jacksonville.
- Southern District, 9 months, Miami.

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[1] Jury and non-jury trials total.

Alabama:
Northern District, 8 months, Birmingham.
Middle District, 3 months,[1] Montgomery.
Southern District, 11 months, Mobile.
Tennessee:
Eastern District, 4 months, Knoxville.
Middle District [2], Nashville.
Western District, 8 months, Memphis.
California:
Northern District, 23 months, San Francisco.
Eastern District, 21 months,[1] Sacramento.
Central District, 10 months, Los Angeles.
Southern District [3], San Diego.
Georgia:
Northern District, 4 months, Atlanta.
Middle District, 4 months, Macon.
Southern District, 1 month, Savannah.
Pennsylvania:
Eastern District, 36 months, Philadelphia.
Middle District, 21 months [1], Scranton.
Western District, 12 months, Pittsburgh.
Illinois:
Northern District, 11 months, Chicago.
Eastern District, 12 months [1] East St. Louis.
Southern District, 11 months [1], Peoria.
New Jersey: 1 month, Newark.

Of the 29 district courts represented in the above statistics, 21 courts had a median time of 12 months or less; 8 courts had median trial completion times of 6 months or less.

In hearings last April before the House Committee on Appropriations, discussing the EEOC budget request for FY 1971, Chairman Brown noted that EEOC's backlog "now means an average delay of 18 months to 2 years before the Commission can complete action on a complaint." How much longer would this interval be extended if at the end thereof, the Commission then had to begin its administrative proceedings followed by resort to the appellate courts? In his testimony before the General Subcommittee on Labor recently, Chairman Brown noted that "during the first seven and a half months of this Fiscal Year, 14,644 charges were filed with the Commission, *a number greater than the number received in all of last Fiscal Year.*" (Emphasis supplied.) He also stated that as of February 20, 1971, the backlog of charges pending before the Commission numbered 25,195.

The increased caseload and backlog of EEOC alone not only undermines but clearly refutes the contention that the administrative process would bring quicker relief. Add to this backlog the increased workload that would be generated by the additional jurisdiction bestowed on EEOC by the Committee bill (jurisdiction over state and local

[1] Jury and non-jury trials—total.
[2] No figure given: only one jury trial reported completed in fiscal year 1970.
[3] No figure given: only one jury trial reported completed in fiscal year 1970.

employees, transfer of the Office of Federal Contract Compliance to EEOC, transfer of pattern and practice suits to EEOC from the Justice Department, transfer of authority over discrimination among federal employees to EEOC from the Civil Service Commission, jurisdiction extended to employers with 8 employees as compared to the present 25 employee limitation) conclusively establishes that claims of quicker remedies through the administrative "cease and desist" process are more fiction than fact.

Finally, we suggest that a further impediment to timely action is presented by virtue of the fact that under the administrative approach the decision to grant relief can be made only by the Commission. An EEOC attorney in the field could investigate, and he could attempt conciliation; but there would be only one facility available to issue a cease and desist order—the Commission in Washington. Through the judicial approach, EEOC attorneys would have access to our 93 Federal district courts for enforcement.

It seems eminently more sensible to us to proceed in a forum where not only can preliminary relief be made available at the outset, but, if circumstances warrant, further relief can be obtained as the case proceeds, with *permanent relief* embodied in a self-enforcing decree issuing at the culmination of trial. Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease-and-desist approach, and aggrieved parties will have their remedy at the earliest possible moment.

This alternative saves the best features of the independent agency approach—expertise and political autonomy—while avoiding the problems that arise when an active enforcement stance must be accommodated within a structure that contemplates quasi-judicial neutrality. The problem title VII seeks to correct is not one susceptible to the kind of policy balancing that is usual in the administration of law regulating utilities or other situations involving competing interests. Racial discrimination does not occupy the status of an "interest" under our system of law. It is a grave injustice which should be eliminated in as quick and efficient a manner as possible.

B. Greater Prestige of Federal Judges

The appropriate forum to resolve civil rights questions, questions of employment discrimination as well as such matters as public accommodations, school desegregation, fair housing, and voting rights, is a court. Civil rights issues usually arouse strong emotions. United States district court proceedings provide procedural safeguards; Federal judges are well known in their areas and enjoy great respect; the forum is convenient for the litigants and is impartial; the proceedings are public, and the judge has power to resolve the problem and fashion a complete remedy.

C. Evidentiary Matters

The district court approach has a great advantage over an administrative hearing procedure in securing the needed evidence. The Federal Rules of Civil Procedure, with respect to discovery, would greatly facilitate the collection of evidence for trial. Under a cease-and-desist approach, the rather cumbersome method of enforcing subpoenas severely inhibits the acquisition of evidence for trial, making the hearing

very dependent upon the investigation. Experience has shown that investigations, which are aimed simply at developing enough evidence to find reasonable cause, fall short of providing adequate evidence for obtaining a decision where the standard, as it is in the courts, is a preponderance of evidence on the record. Discovery procedures take less time than administrative fact-gathering techniques, and the contempt powers of the court operate to inhibit any intimidation of witnesses, which is a rather difficult problem that is often real, but seldom apparent.

II. Detrimental Provisions and Critical Omissions in the Committee Bill

A. As elaborated or hereafter, we conclude that those provisions in the Committee bill dealing with the transfer of the Office of Federal Contract Compliance (OFCC), the extension of EEOC jurisdiction to state and local employees, and the transfer of pattern and practice suits from the Justice Department to the EEOC are detrimental to the major objective of this bill, which is to provide an enforcement power to effectuate appropriate and timely remedies for discriminatory employment conditions.

1. Section 11 of the Committee bill would transfer the function of the Office of Federal Contract Compliance under Executive Order 11246 from the Department of Labor to the Equal Employment Opportunity Commission. We oppose this transfer because: OFCC has made commendable progress in achieving the Executive Order's goal of equal employment opportunity by government contractors; the transfer would create a hiatus in the administration of these crucial programs and add an insurmountable administrative burden to an already overburdened agency; and the administration of the programs will prove unworkable because the EEOC would be assuming a dual role of contract compliance and the regulatory function of processing complaints of employment discrimination.

OFCC is charged with the administration of the nondiscrimination and affirmative action provisions of the Executive Order which relate to Federal contractors and Federally-assisted construction contractors. We feel that this function falls logically within the Department of Labor. The present location of OFCC permits it to benefit directly from the experience gained by the Labor Department in the administration of other workplace standards and anti-discrimination programs which are enforced by similar sanctions as well as its general expertise in labor-management relations. The Department also includes the Manpower Administration, thus making it possible for OFCC to include job training efficiently in the development of useful affirmative action programs.

While OFCC and EEOC share the goal of promoting the civil rights of minority workers, the programs they are presently administering are considerably different. EEOC acts, following an individual complaint, to redress instances of actual job discrimination. OFCC works with Government contractors to insure equal employment opportunity. The merging of these two distinct functions in a single agency will create serious problems, and such combination will

undoubtedly work to the detriment of both programs. Incidentally, it should be pointed out, that once EEOC is given enforcement powers, federal contractors will be, just as other employers, subject to the processes and remedies of the EEOC in addition to those exercised by OFCC.

The EEOC presently has a tremendous backlog of pending charges. The addition of some form of enforcement powers will greatly increase its administrative responsibilities. We feel that it is simply unrealistic to expect EEOC simultaneously to shoulder the burden of OFCC's program. If the Committee's bill is enacted, we foresee a significant disruption of the compliance program. Regarding such transfer Chairman Brown of the EEOC appeared before the General Subcommittee on Labor and stated:

> Given the tremendous backlog of charges pending now with the Commission—25,195 as of February 20, 1971—the additioanl work which would have to be undertaken by the Commission if it gets enforcement powers, the difficulty of obtaining adequate funding for the Commission, and finally, the tremendous administrative difficulties embodied in such a transfer, I am doubtful as to the desirability of transferring OFCC at this time. Specifically, the administrative difficulties are by far the greatest in my view; almost insurmountable.

The primary responsibility for the implementation of the Executive Order as it relates to government procurement rests and must remain, with the individual Executive agencies. The coordination of the goals of equal employment opportunity with the needs of these agencies to obtain goods and services can be most effectively accomplished from within the Executive Branch of Government. Indeed, the experience of the various Presidential Committees formerly charged with the compliance program indicates the inherent difficulties in placing the operations of the agencies under the control of a separate body, such as the EEOC.

2. The Extension of Coverage to State and Local Employees. Apart from adding to the EEOC's already swollen workload which is treated in more detail in other portions of this report, we believe this area helps substantiate our earlier conclusion that the Federal courts are the proper forum. If its jurisdiction is thus extended, we will have the anomaly of a federal administrative agency interposing itself in the internal administration of state and local government. The NLRB does not have such jurisdiction over employees of state and local governments in matters involving discrimination in employment and we see no justification for extending such jurisdiction to the EEOC. It would be inconsistent with our system of division of governmental powers to subject state and local authorities to the cease-and-desist power of a federal commission.

3. Transfer of Pattern and Practice Suits to EEOC. We oppose the provisions of the Committee bill which would transfer from the Department of Justice to the EEOC the authority to try pattern and practice suits because it involves not only the transfer of authority from one agency to another, but also the elimination of the judicial remedies now provided by Section 707 of the Civil Rights Act. It will

unquestionably hinder the achievement of equal employment opportunity. In effect, the Committee bill, will merely delay the achievement of any remedy to groups of discriminatees by interposing yet another obstacle, the additional forum of the EEOC, which after reaching its conclusion in such matters, under its hearing and cease and desist procedures, must ultimately petition a Federal Circuit Court of Appeals for enforcement. Certainly, it is in this area, that suits are frequently initiated as class actions because of the numbers of employees involved and the amounts of backpay due, which will usually require the authority of a Court enforced decree.

Between July, 1965, when title VII took effect and April 2, 1971, the Civil Rights Division of the Department of Justice filed some 60 suits on the basis of Section 707. The Division has had a high degree of success in litigating these cases, and principles established in them, at the trial or appellate level, have been useful to complaining private litigants and to other federal agencies. Six Circuit Courts have rendered decisions favorable to the Division's position and to date the Division has prevailed in each pattern and practice suit that has come to final decision. Such a record warrants a retention of pattern and practice suits in the Department of Justice. Some of the reasons for its success are the fact that it has access to the investigative resources of the Federal Bureau of Investigation—resources which have proved invaluable in ascertaining the facts and marshaling them for evidence in pattern or practice suits. Moreover, the United States Attorneys, who are the Department's field representatives located in every judicial district in the nation, have a thorough knowledge of local situations and are in a position to render valuable counsel and assistance.

4. Recovery of Court Costs Limited to "Prevailing Plaintiff." Under existing law, the Court has the discretion to allow the "prevailing party" a reasonable attorney's fee as part of the costs for litigation proceeding under this title. The Committee bill eliminated the term "prevailing party" and substitutes the term "prevailing plaintiff". No justification for such change was presented in hearings on the bill; it is contrary to the rule in most jurisdictions; and it may constitute an incentive for harassment suits and a "disincentive" to respondents not to resist ill-founded claims.

B. Critical Omissions of the Committee Bill. At the subcommittee and committee levels, we attempted to amend the Committee bill because it lacked certain procedural and due process safeguards. These deficiencies include: failure to provide for a reasonable statute of limitations on backpay; failure to provide for service of a charge on the named respondent within a reasonable time; failure to provide that title VII, as amended, shall be the exclusive remedy. We believe these omissions are critical and should be called to the attention of the House for we expect to make further attempts on the House floor to provide minimal due process standards in the Committee bill.

1. Statute of Limitations. Under the Committee bill, the time period in which individual charges of employment discrimination must be filed has been extended from 90 days to 180 days from the date of the alleged discriminatory conduct; this is identical to the statute of limitations under the National Labor Relations Act. We concur in such extension. However, testimony in the hearings indicates that pattern or practice suits now brought by the Justice Department are not sub-

ject to such limitation. Civil suits in most jurisdiction are subject to statutes of limitations ranging usually between two or three years. Under existing law, recovery of backpay in such pattern or practice suits can extend back to 1965, the effective date of enactment of the Civil Rights Act of 1964. Thus potential respondents whether they be employers, labor organizations or employment agencies may be subject to enormous monetary penalties in the absence of a definite limitation. To avoid the litigation of stale charges and to preclude respondents from being subject to indefinite liabilities, it is clear that a precise statute of limitations is needed. In view of the tremendous backlog currently existing at the EEOC, and the failure to require a prompt serving of the charge on named respondents as discussed hereafter, equitable principles require a limitation on liability.

Our amendment, which failed by a tie vote, inserted language which provided that no order shall include backpay or liability which accrued more than two years prior to the filing of a charge with the Commission. In view of the equitable principles on which such amendment is based, it is deserving of bipartisan support.

2. Service of the Charge. At the hearings of this bill, it was brought out that in most cases, employers were not notified about the filing of a charge until months later, not uncommonly a year or more. As the Committee bill failed to remedy this problem, we sought to amend it to require service on the named respondent within 5 days after the filing of a charge. In the discussion that ensued it was emphasized that the 5 day figure was not a magic number and that any reasonable time period would be acceptable. Nevertheless, the Committee rejected the 5 day requirement and no reasonable alternative was offered.

It seems patent that failure to require timely notice violates all concepts of due process. Under the National Labor Relations Act, a charge is not deemed effectively filed for purposes of the 6 months statute of limitation *until* service of a copy of the charge on the respondent. In view of specific abuses regarding service of charges under title VII, a specific requirement for service on the respondent within a specified time period (5 to 7 days) is a prerequisite to maintaining minimum standards of due process.

3. Failure to Make Title VII an Exclusive Federal Remedy. Despite the enactment of title VII of the Civil Rights Act, charges of discriminatory employment conditions may still be brought under prior existing federal statutes such as the National Labor Relations Act and the Civil Rights Act of 1866. In view of the comprehensive prohibitions against discrimination contained in title VII, and the intent of the Committee bill to consolidate procedures and remedies under one agency, it would be consistent to make title VII the exclusive remedy. No public interest is served in continuing to permit a multiplicity of statutes or forums to deal with discrimination in employment. However, our attempt to amend the Committee bill to make title VII an exclusive remedy (except for pattern or practice suits) was rejected. In our view, the failure to make this an exclusive remedy merely encourages an individual who has lost his case in one forum under one statute to relitigate his case in still another forum under another federal statute. Under NLRB procedures and the proposed

EEOC procedures, the burden as well as the cost of prosecuting charges is borne by the respective agencies, and therefore, the taxpayer.

CONCLUSIONS

In essence, the Committee bill will result in interposing an additional obstacle in the nature of an administrative forum, between the aggrieved party and the effective judicial relief which can be achieved by a court enforced order. For the reasons previously documented, direct judicial relief can be obtained more quickly and thus more effectively through the federal district courts.

Secondly, and equally as important, the massive expansion of jurisdiction and the transferring of various programs to the EEOC at a time when the agency is struggling to control a burgeoning backlog of cases, will further hamstring efforts to bring meaningful and timely relief to persons aggrieved by discriminatory employment conditions. At a time when Congress should be directing its efforts solely to helping the EEOC become a more effective agency by giving it access to judicial enforcement, the committee bill represents a step backward and will thrust the EEOC into an administrative quagmire which can only delay the attainment of a reasonable standard of operational efficiency that Congress should expect and demand.

Lastly, the failure of the committee bill to include such minimal due process requirements as the prompt notification to named respondents, a reasonable statute of limitations as to backpay and other liability, and failure to make this an exclusive remedy, are critical omissions whose inclusion we deem vital to meet due process standards.

ALBERT H. QUIE.
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JOHN DELLENBACK.
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EDWIN B. FORSYTHE.
VICTOR V. VEYSEY.
JACK F. KEMP.

INDIVIDUAL VIEWS OF REPRESENTATIVE MAZZOLI

I favor equal employment opportunity for all Americans and support all realistic legislative measures directed toward this goal. However, because of significant provisions contained in, and omitted from, the Committee version of H.R. 1746, I cannot support this legislation in the form in which it has been reported. It requires major amendment in order to become, in my opinion, realistic and appropriate legislation to end job discrimination.

My objections to H.R. 1746 conform generally to the objections raised in the Minority Views printed in this Report.

Basically, I prefer the stability, expedition and protection to plaintiff and defendant alike offered by judicial enforcement of equal employment rights over the administrative cease and desist approach contained in H.R. 1746.

I also prefer that a choice of remedies be incorporated into this legislation. A multiplicity of remedies and of forums, except in pattern and practice suits, is inconsistent with the intent of this legislation which is to consolidate and coordinate all efforts to eliminate discrimination in employment.

There ought also, in my opinion, to be a two-year statute of limitations incorporated into H.R. 1746. I concur with the Minority Views on this matter as set forth elsewhere in this Report.

Likewise, I concur in the conclusion and the reasoning of the minority in opposing the shift of the Office of Federal Contract Compliance to the Equal Employment Opportunities Commission.

On these groups and on others, most of which are discussed in the Minority Views printed in this Report, I cannot support the Committee version of H.R. 1746, and will support amendments or substitutes thereto.

ROMANO L. MAZZOLI.

92d CONGRESS
1st Session

H. R. 9247

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 1971

Mr. ERLENBORN (for himself and Mr. MAZZOLI) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunity Act of 1971".

SEC. 2. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 (f) (6)) is amended to read as follows:

"(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General

under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

(b) Subsection (h) of such section 705 is amended to read as follows:

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (a) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) is amended to read as follows:

"(a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based and the person or persons aggrieved) that an em-

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ployer, employment agency or labor organization has engaged in an unlawful employment practice, the Commission, within five days thereafter, shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the 'respondent') with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

(b) Subsection (d) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(d) A charge under subsection (a) shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency. Except as provided in subsections (a) through (d) of this section and in section 707 of this Act, a charge filed hereunder shall be the exclusive remedy of any person claiming to be aggrieved by an unlawful employment practice of an employer, employment agency, or labor organization."

(c) Subsection (e) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the re-

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spondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(d) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 200e-5) are redesignated as subsections (g) through (l), respectively,

and the following new selection is added after section 706 (e) thereof:

"(f) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge and the court having jurisdiction over such action shall have the authority to grant such temporary or preliminary relief as it deems just and proper: *Provided*, That no temporary restraining order or other preliminary or temporary relief shall be issued absent a showing that substantial and irreparable injury to the aggrieved party will be unavoidable. It shall be the duty of a court having jurisdiction over proceeding under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(e) Subsection (h) of section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative

action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual, pursuant to section 706(a) and within the time required by section 706(d), neither filed a charge nor was named in a charge or amendment thereto, or was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a). No order made hereunder shall include back pay or other liability which has accrued more than two years before the filing of a complaint with said court under this title."

dential. Giving publicity to such action will be prohibited and punishable.

These amendments substantially improve the committee bill. We can all be grateful to the distinguished Chairman of the Subcommittee, the gentleman from Pennsylvania (Mr. Dent), for proposing them.

I urge all my colleagues to support the committee bill as modified by these amendments and to defeat the Erlenborn substitute.

Mr. ERLENBORN. Mr. Chairman, I yield 10 minutes to the gentleman from Minnesota (Mr. Quie).

(Mr. Quie asked and was given permission to revise and extend his remarks.)

Mr. QUIE. Mr. Chairman, as ranking minority member of the Committee on Education and Labor I was an active participant in helping to develop what I regard as the most effective approach to outlawing racial and other forms of arbitrary discrimination in the various aspects of the employment relationship. This approach is fully reflected in the substitute bill now before the House, H.R. 9247, introduced on a bipartisan basis by two members of our committee, Representatives Erlenborn and Mazzoli.

During the deliberations of the committee there was never any question that the EEOC—Equal Employment Opportunity Commission—created by the Civil Rights Act of 1964 sadly needed effective authority to enforce the law, an authority which it does not presently possess. Virtually all of our committee members were agreed on that—disagreement arose only as to which method of enforcement would be not only most effective but, expeditious, fair and equitable as well.

The committee bill resorts to what has become popularly known as the cease-and-desist approach. This means giving the Commission the power to hold hearings and to issue cease-and-desist orders enforceable in the Federal circuit courts of appeal. The National Labor Relations Board is a striking example of an agency utilizing that approach and all of us are aware how frequent a target of criticism, from management as well as labor, that agency has become.

The substitute bill, on the other hand, would in no wise change the existing structure of the EEOC. It would continue to have the authority to investigate charges of unlawful discrimination, to mediate and conciliate such controversies, and to seek their voluntary settlement. But added to these would be the power to bring suit directly in the Federal district courts against the parties whom the Commission, on the basis of its investigation, believed had engaged in unlawful discrimination.

The advantages of this judicial approach over the cease-and-desist procedure provided in the committee bill are immediately apparent. A decision in favor of the Commission by the district court would be immediately enforceable—a cease-and-desist order by the Commission would not; enforcement would require resort by the Commission to the appropriate Federal court of appeals. Thus the committee bill would require two procedural steps for enforcement—the substitute only the one.

Moreover, under the substitute, the district court could, if appropriate, grant relief at the commencement of the proceedings before it. In order to secure such immediate relief under the committee bill, the Commission would be compelled to seek it, not from the court of appeals which would ultimately enforce the Commission's cease-and-desist orders, but from a separate and distinct Federal district court

barriers often confront discrimination in the form of lower wages, or of segregation of women into the lowest paying jobs. The United Electrical Workers Union has estimated that American industry saves $22 billion a year by paying women lower wages than men for essentially the same work.

In 1969 the average American woman who worked full time earned only $60 for every $100 earned by the average American workingman and black women made 20 percent less than that.

Women who have completed college and at least 1 year of graduate school receive only 67 percent of the salary received by men with equivalent training—a woman with a college degree earned about as much as a man with an eighth-grade education averaged in 1968.

But women who are less educated and highly skilled suffer most—in 1966, women salesworkers received 41 percent of the salary received by men in the same occupation.

The nonwhite woman worker who labors under the double discrimination of race and sex faces the severest discrimination. In 1969 white women earned a median income of $5,182 compared with $8,668 for white and nonwhite men. Non-white women, however, who are most heavily concentrated in low-wage, low-skill jobs, earned $4,126 only 47 percent of the income of the average male worker, white or black.

The problems of Spanish-surnamed Americans, a racial minority, are no less serious. Although they are the second largest minority group in the United States, the Spanish-surnamed population is often neglected or ignored, even in view of the massive economic and social injustice to which they are subject, and cases involving discrimination against Orientals have been practically invisible under Title VII.

The unhappy history of continued employment discrimination against women and minorities, brings us to the question of how we can improve the act, to which we, as Americans, are committed. The Hawkins bill provides such improvement—the Erlenborn bill does not.

The double discrimination suffered by minority group women cannot be eliminated until we begin to deal boldly with their problems as women, as well as their problems as members of a minority.

The important elements in both bills are those dealing with enforcement powers for the EEOC and the scope of coverage of Title VII.

The Hawkins bill gives the EEOC cease-and-desist powers in addition to the right to issue affirmative orders for back pay and reinstatement. This power is crucial; an administrative order can be obtained within several months, while the median time for resolving a case in the U.S. district court is 19 months. Also, the cease-and-desist power is a power which is given to such regulatory agencies as the NLRB, the SEC, the FCC, and 34 State fair employment practices commissions.

In contrast, the Erlenborn bill would give the EEOC only the time-consuming remedy of court enforcement. It seems to be illogical and contrary to the intention of the Civil Rights Act of 1964 for the Attorney General or the district court to assume the function of deciding whether there has been discrimination when the EEOC has unique expertise, by virtue of its experience, in investigating and concluding cases concerned with employment discrimination.

Mr. REID of New York. Mr. Chairman, on the point of how rapidly cases proceed, let me just say that litigation on Title VII cases has been held up for years in courts.

For example, the case of Washington against T.G. & Y Stores has been before the Federal District Court for the Western District of Louisiana on motions to dismiss for 13 months, but the case has not yet reached trial. Even more outrageous is the fact that charges were originally brought in this case 3 years ago.

Second, let me point out that Chief Justice Burger has opposed legislative introduction of large numbers of cases into the Federal judicial system without first providing for the reorganization of that system.

In an address before the American Bar Association last year, Chief Justice Burger said:

> The difficulty lies in our tendency to meet new and legitimate demands with new laws which are passed without adequate consideration of the consequences in the terms of case load.

The Commission itself estimates that the new case load could be 20,000 additional cases.

I would submit that that would not result in expediting the administration of justice, but it could mean a lack of timely and effective enforcement.

The House passed this bill in 1966. The Senate passed it in 1970. I hope today that we make equal employment opportunity a reality now and defeat the Erlenborn amendment and then go on to approve the committee bill which is the kind of legislation that should have really been passed 20 years ago and which is legislation that is vitally necessary to our country.

The CHAIRMAN. The Chair recognizes the gentleman from Illinois (Mr. Erlenborn) for 4 minutes.

(Mr. Erlenborn asked and was given permission to revise and extend his remarks.)

Mr. ERLENBORN. Mr. Chairman. I am not going to take the time of the Committee now to again reiterate what is in my substitute or what is in the committee bill. I think we have had a thorough discussion of that during the last 2 days.

We also have had an issue raised, new this week, by the introduction of a new element by the gentleman from Pennsylvania (Mr. Dent) by some three amendments that he proposes to offer if he has an opportunity to offer them to the committee bill.

Two of those amendments are amendments that I offered in the subcommittee and in the full committee. They were rejected by the committee. I would still support them if it comes to that, but I hope it does not. I hope my substitute amendment is adopted.

The third point is another issue that has been somewhat debated and that is the question of removing from the OFCC jurisdiction the right to set effective goals, an affirmative action plan.

The circuit court of appeals has affirmed the Philadelphia plan.

There is an obligation requiring bidders on Federal or federally assisted construction projects to submit an affirmative action plan for the employment of minorities excluded from referral systems in six trades.

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The courts upheld this, and held specifically that it does not violate Title VII of the 1964 Civil Rights Act.

But what is the thrust of the gentleman's amendment? It can be one of two things. It either means nothing or it destroys the affirmative action authority that the OFCC now exercises.

I submit from the explanation of the gentleman from Pennsylvania (Mr. Dent) that he believes it does the latter—it destroys this authority.

How the proponents of civil rights can support this sort of amendment and can take the floor and say that this is a fine thing—I do not understand, because the one great opportunity for greater minority employment in the construction crafts has been through the OFCC affirmative action plan.

Yesterday I referred to an editorial published in the Wall Street Journal and read a part of it. A good deal of the debate we have had concerning the effectiveness of enforcement proceedings, cease and desist vis-a-vis court enforcement, has been as to the speed and effectiveness of the opposing enforcement procedures. This editorial in the Wall Street Journal addresses itself to that point:

But speed is only one measure of effectiveness; final results are a better gauge. But by that measure, too, the scholarly critics doubt that complex problems of bias, deeply rooted in many aspects of the society, lend themselves to resolution through cease and desist orders. For one thing such orders issued by the labor board have the relatively limited function of getting parties to negotiate. At the EEOC, they would presumably have to carry a greater problem-solving load. Furthermore, some experts worry that a substantially strengthened EEOC would invite subversion from special-interest groups.

Concluding, the editorial states—

No doubt, the new powers Congress confers upon the EEOC will profoundly affect the future course of the civil-rights movement. While most civil-rights advocates prefer cease and desist, it's by no means clear that this approach would ultimately prove more effective than merely authorizing the EEOC to ask courts to enforce its anti-discrimination rulings. As Mr. Blumrosen writes: "One court decision is worth 10 written conciliation agreements and one hundred annual reports of administrative agencies."

Mr. Chairman, I urge support of the Erlenborn-Mazzoli substitute, which would give the Commission the right to go into court, resulting in fairness to both parties, and expeditious, judicial and fair relief. I hope the Erlenborn-Mazzoli substitute is adopted.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. Hawkins).

(Mr. Hawkins asked and was given permission to revise and extend his remarks.)

Mr. HAWKINS. Mr. Chairman, I was quite upset when the minority leader some time earlier mentioned the Philadelphia plan as the main support apparently of blacks and others to get jobs in America.

In the first year of the operation of this plan do you know how many blacks got jobs? Less than 100. Do you know how many women have gotten jobs in the history of the Philadelphia plan? Not a single one. Yet the gentleman has the nerve to put that forth as a civil rights record to go to the American people.

The gentleman from Illinois (Mr. Erlenborn) says that we are attempting to destroy affirmative action plans by transferring the authority of the Office of Federal Contract Compliance. The amendment

I urge my colleagues to cast their votes for true liberty and justice for all, by voting for the original bill and against the substitute.

Mr. ROBISON of New York. Mr. Chairman, I am supporting—and intend to vote for—the committee bill, H.R. 1746. I recognize that there are favorable things which can be said about both the committee bill and the proposed substitute, H.R. 9247; and I recognize, too, that several outstanding business leaders in the Nation and in my congressional district have expressed the opinion that the committee bill places an unfair burden on segments of the business community. But, on balance, I feel the committee bill gives us the best chance to further equal employment opportunities for all American workers, and does so in a manner consistent with the themes of justice and fairness which are so rightfully important to my friends in the business community.

There is little debate today about the necessity for some action. Everyone appears to agree that more can—and should—be done at the Federal level to insure all citizens equal access to available job markets. Proponents of the committee bill and the substitute bill both agree that the Equal Employment Opportunity Commission needs a form of enforcement power. The only question is what kind of enforcement power is the fairest and most effective to all involved.

The substitute bill would permit EEOC attorneys to sue in Federal district courts in cases where the EEOC has found reasonable cause to believe a violation has occurred. In the abstract, this seems reasonable enough. But litigation in the Federal courts can be a lengthy, and expensive process—to everyone concerned. The average length of time for a Federal court action, for example, is 19 months. By flooding the district courts with all Federal job discrimination cases, this backlog can only increase. Meanwhile, those allegedly discriminated against are still frozen from a possible job opportunity. In this type of case, I doubt the effectiveness of such enforcement; and I think business leaders should also realize that defending actions in this way is going to be an expensive proposition indeed.

The committee bill, on the other hand, proposes to give EEOC authorization to issue complaints, hold hearings, and where an unlawful employment practice is found, issue appropriate orders, subject of course, to judicial review. This "cease-and-desist" method of enforcement is the same type of mechanism given to virtually every other Federal regulatory agency and is the same adopted by 32 of the 37 States which have agencies to enforce equal employment opportunity laws—including New York.

Of course, if a full hearing is demanded, a final decision might still take several months to be reached—although not nearly as long as the average Federal court action—but since the agency would have "cease-and-desist" authority, it should be able to settle complaints much more expeditiously without going to hearing. This has been the experience of the NLRB, for example, where 95 percent of its cases do not go to hearing. This is as much a protective device for the businessman as it is for the complainant since it cuts off the threat of scurrilous complaints dragging them into extensive and expensive litigation.

There appears to be little grievance about the operation of the State agencies already in existence which have powers roughly equivalent to those proposed in the committee bill. At least, I have never had a

much about actions affecting them, over which they have no control—and over which their elected representatives have little if any control.

There is an old truism which goes like this:

> Vice is a monster of such frightful mien,
> As to be hated needs but to be seen;
> But seen too oft—familiar with its face,
> We first despise, then pity, then embrace.

I am afraid that is what is happening here. Step by step, power and control over individuals is expanded. The matter of discrimination in employment, when it occurs, should be handled by a process of conciliation. The average businessman is reasonable and sensible. In a highly competitive field, in his employment practices, he is obliged to choose people who can get along, attract business for him, and produce better than some other applicant for the job. That system puts a premium on merit and productivity. He should not be put in a straight jacket in exercising his judgment in deciding on an employee's worth to fill his particular needs. Every businessman in America is complaining about too much Government control over decisions which he is much better able to make.

I have already said I am supporting the pending substitute offered by the gentleman from Illinois (Mr. Erlenborn). It would water down and make much less offensive the provisions of H.R. 1746. I do hope it will be approved.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. Erlenborn).

TELLER VOTE WITH CLERKS

Mr. ERLENBORN. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. ERLENBORN. Mr. Chairman, I demand tellers with clerks.

Tellers with clerks were ordered.

PARLIAMENTARY INQUIRY

Mr. DENT. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. DENT. Mr. Chairman, a vote in the affirmative will be a vote for the Erlenborn amendment in the nature of a substitute; and a vote against it, a no vote, will be a vote that will preserve the opportunity for further amendments. Is that correct?

The CHAIRMAN. The Chair will state the proposition. The question occurs on the Erlenborn amendment, the amendment in the nature of a substitute. A vote of "aye" will be a vote in favor of the substitute. A vote of "no" will be a vote against the substitute as offered by the gentleman from Illinois (Mr. Erlenborn).

The CHAIRMAN appointed as tellers Messrs. Erlenborn, Dent, Hawkins, and Steiger of Wisconsin.

The Committee divided.

The CHAIRMAN. Twelve minutes have expired. Are there any Members in the Chambers who have not voted and wish to vote?

Mr. FULTON of Pennsylvania. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FULTON of Pennsylvania. Mr. Chairman, does not the rule explicitly state that the 12 minutes is the minimum? So, there is no 12-minute expiration. Any Member may vote so long as he is in the Chamber before the final report is made; is that not correct?

The CHAIRMAN. The Chair has so ruled.

Is there any Member in the Chamber who has not voted but who wishes to vote?

Mr. FULTON of Pennsylvania. Mr. Chairman, a further parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FULTON of Pennsylvania. It is definite, then, that there is no maximum time limitation on a recorded teller vote?

The CHAIRMAN. Not until the vote is so announced.

The Committee divided, and the tellers reported that there were—ayes 200, noes 194, not voting 40, as follows:

[Roll No. 261]

[Recorded Teller Vote]

AYES—200

Abernethy	Clausen, Don H.	Goodling
Andrews, Ala.	Cleveland	Griffin
Andrews, N. Dak.	Collier	Gross
Archer	Collins, Tex.	Grover
Arends	Colmer	Hagan
Ashbrook	Conable	Haley
Baker	Crane	Hall
Baring	Daniel, Va.	Hammerschmidt
Belcher	Davis, Ga.	Hansen, Idaho
Bell	Davis, Wis.	Harsha
Bennett	Delaney	Harvey
Betts	Dellenback	Hébert
Bevill	Dennis	Henderson
Blackburn	Devine	Hillis
Bow	Dickinson	Hosmer
Bray	Dorn	Hull
Brinkley	Dowdy	Hunt
Broomfield	Downing	Hutchinson
Brotzman	Duncan	Ichord
Brown, Mich.	du Pont	Jonas
Broyhill, N.C.	Edwards, Ala.	Jones, Ala.
Broyhill, Va.	Erlenborn	Jones, N.C.
Buchanan	Esch	Jones, Tenn.
Burke, Fla.	Evins, Tenn.	Keating
Burleson, Tex.	Findley	Keith
Byrnes, Wis.	Fisher	Kemp
Byron	Flowers	King
Cabell	Flynt	Kuykendall
Caffery	Ford, Gerald R.	Kyl
Camp	Forsythe	Landgrebe
Carter	Fountain	Landrum
Casey, Tex.	Frelinghuysen	Latta
Cederberg	Fuqua	Lennon
Chamberlain	Galifianakis	Lent
Chappell	Gettys	Lloyd
Clancy	Gibbons	Lujan

McClure
McCollister
McKevitt
McMillan
Mahon
Mailliard
Mann
Martin
Mathias, Calif.
Mathis, Ga.
Mayne
Mazzoli
Michel
Miller, Ohio
Mills, Md.
Minshall
Mizell
Myers
Natcher
Nelsen
Nichols
Passman
Patman
Pelly
Pettis
Pickle
Pirnie
Poage
Poff
Powell
Preyer, N.C.
Price, Tex.
Purcell
Quie
Quillen
Rarick
Reid, Ill.
Rhodes
Roberts
Robinson, Va.
Rogers
Rousselot
Runnels
Ruppe
Ruth
Sandman
Satterfield
Scherle
Schmitz
Schneebeli
Schwengel
Scott
Shriver
Sikes
Skubitz
Smith, Calif.
Smith, N.Y.
Snyder
Spence
Springer
Steiger, Ariz.
Steiger, Wis.
Stephens
Stubblefield
Stuckey
Talcott
Taylor
Teague, Calif.
Terry
Thompson, Ga.
Thomson, Wis.
Thone
Veysey
Waggonner
Wampler
Ware
Watts
Whalley
White
Whitehurst
Whitten
Wiggins
Williams
Wilson, Bob
Winn
Wright
Wyatt
Wylie
Wyman
Young, Fla.
Young, Tex.
Zion

NOES—194

Abourezk
Abzug
Adams
Addabbo
Albert
Anderson, Calif.
Anderson, Ill.
Annunzio
Ashley
Aspin
Aspinall
Badillo
Barrett
Begich
Bergland
Biaggi
Biester
Bingham
Blanton
Blatnik
Boggs
Boland
Bolling
Brademas
Brasco
Brooks
Burke, Mass.
Burlison, Mo.
Burton
Byrne, Pa.
Carey, N.Y.
Carney
Celler
Chisholm
Clay
Collins, Ill.
Conte
Conyers
Corman
Cotter
Coughlin
Culver
Daniels, N.J.
Danielson
Davis, S.C.
de la Garza
Dellums
Denholm
Dent
Diggs
Dingell
Donohue
Dow
Drinan
Duiski
Eckhardt
Edmondson
Edwards, Calif.
Eilberg
Fish
Flood
Foley
Ford, William D.
Fraser
Frenzel
Fulton, Pa.
Fulton, Tenn.
Gallagher
Garmatz
Gaydos
Giaimo
Grasso
Gray
Green, Oreg.
Green, Pa.
Griffiths
Gude
Halpern
Hamilton
Hanley
Hanna
Harrington
Hathaway
Hawkins
Hays
Hechler, W. Va.
Heckler, Mass.
Helstoski
Hicks, Mass.
Hicks, Wash.
Hogan
Holifield
Horton
Howard
Hungate
Jacobs

Johnson, Calif.	Mosher	Ryan
Kastenmeier	Moss	St Germain
Kazen	Murphy, N.Y.	Sarbanes
Kee	Nedzi	Saylor
Klucsynski	Nix	Scheuer
Koch	Obey	Shipley
Kyros	O'Hara	Sisk
Leggett	O'Konski	Slack
Link	O'Neill	Smith, Iowa
Long, Md.	Patten	Stanton, J. William
McClory	Pepper	Stanton, James V.
McCloskey	Perkins	Steed
McCormack	Peyser	Steele
McDade	Pike	Stratton
McDonald, Mich.	Podell	Symington
McFall	Price, Ill.	Teague, Tex.
McKay	Pucinski	Thompson, N.J.
Macdonald, Mass.	Randall	Tiernan
Madden	Rangel	Udall
Matsunaga	Rees	Ullman
Meeds	Reid, N.Y.	Van Deerlin
Melcher	Reuss	Vanik
Metcalfe	Riegle	Vigorito
Mikva	Robison, N.Y.	Waldie
Miller, Calif.	Rodino	Whalen
Mills, Ark.	Roe	Wilson, Charles H.
Minish	Roncalio	Wolff
Mink	Rooney, N.Y.	Wydler
Mitchell	Rooney, Pa.	Yates
Monagan	Rosenthal	Yatron
Moorhead	Rostenkowski	Zablocki
Morgan	Roush	Zwach
Morse	Roy	

NOT VOTING—40

Abbitt	Gonzalez	Pryor, Ark.
Alexander	Gubser	Railsback
Anderson, Tenn.	Hansen, Wash.	Roybal
Brown, Ohio	Hastings	Sebelius
Clark	Jarman	Selberling
Clawson, Del	Johnson, Pa.	Shoup
Derwinski	Karth	Stafford
Dwyer	Long, La.	Staggers
Edwards, La.	McCulloch	Stokes
Eshleman	McEwen	Sullivan
Evans, Colo.	McKinney	Vander Jagt
Fascell	Mollohan	Widnall
Frey	Montgomery	
Goldwater	Murphy, Ill.	

So the amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Adams, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1746) to further promote equal employment opportunities for American workers, pursuant to House Resolution 542, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

ANDERSON of California, DOW, ROY, ST GERMAIN, DONOHUE, KUYKENDALL, CONTE, and GUDE changed their votes from "yea" to "nay."

Messrs. MORGAN, STAGGERS, CHAPPELL, and GROSS changed their votes from "nay" to "yea."

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the passage of the bill.

Mr. PERKINS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 285, nays 106, not voting 42 as follows:

[Roll No. 264]

YEAS—285

Abzug	Chamberlain	Gaydos
Adams	Clancy	Gibbons
Addabbo	Clausen, Don H.	Gonzalez
Anderson, Calif.	Collier	Goodling
Anderson, Ill.	Collins, Ill.	Gray
Andrews, N. Dak.	Conable	Green, Pa.
Annunzio	Conte	Grover
Arends	Corman	Gude
Ashley	Cotter	Halpern
Aspin	Coughlin	Hamilton
Badillo	Culver	Hanley
Barrett	Daniels, N.J.	Hanna
Belcher	Danielson	Hansen, Idaho
Bell	Davis, Wis.	Harrington
Bennett	de la Garza	Harsha
Bergland	Delaney	Harvey
Betts	Dellenback	Hawkins
Biaggi	Dennis	Hayes
Biester	Dingell	Hechler, W. Va.
Bingham	Donohue	Helstoski
Blanton	Dow	Hicks, Mass.
Blatnik	Downing	Hicks, Wash.
Boggs	Dulski	Hillis
Boland	Duncan	Hogan
Bolling	du Pont	Holifield
Bow	Eckhardt	Horton
Brademas	Edwards, Ala.	Hosmer
Brasco	Edwards, Calif.	Howard
Bray	Eilberg	Hunt
Brooks	Erlenborn	Hutchinsn
Broomfield	Esch	Ichord
Brotzman	Evins, Tenn.	Jacobs
Brown, Mich.	Fascell	Johnson, Calif.
Brown, Ohio	Findley	Jonas
Broyhill, N.C.	Fish	Jones, N.C.
Buchanan	Flood	Kastenmeier
Burke, Fla.	Foley	Keating
Burke, Mass.	Ford, Gerald R.	Keith
Burlison, Mo.	Forsythe	King
Burton	Fountain	Kluczynski
Byrne, Pa.	Fraser	Koch
Byrnes, Wis.	Frelinghuysen	Kyl
Byron	Frenzel	Kyros
Carey, N.Y.	Fulton, Pa.	Latta
Carney	Fulton, Tenn.	Leggett
Carter	Fuqua	Lent
Casey, Tex.	Galifianakis	Link
Cederberg	Gallagher	Lloyd
Celler	Garmatz	Long, Md.

Lujan	Perkins	Smith, Iowa
McClory	Pettis	Smith, N.Y.
McCloskey	Peyser	Springer
McClure	Pickle	Stanton, J. William
McCollister	Pike	Stanton, James V.
McDade	Pirnie	Steele
McDonald, Mich.	Podell	Steiger, Ariz.
McFall	Poff	Steiger, Wis.
McKay	Preyer, N.C.	Stokes
McKevitt	Price, Ill.	Stratton
Macdonald, Mass.	Price, Tex.	Talcott
Madden	Pucinski	Taylor
Mailliard	Quie	Teague, Calif.
Mann	Quillen	Terry
Martin	Rangel	Thompson, N.J.
Mathias, Calif.	Rees	Thomson, Wis.
Matsunaga	Reid, Ill.	Thone
Mayne	Reid, N.Y.	Tiernan
Mazzoli	Reuss	Ullman
Meeds	Rhodes	Van Deerlin
Melcher	Riegle	Vander Jagt
Metcalfe	Robison, N.Y.	Vanik
Michel	Rodino	Veysey
Mikva	Roe	Vigorito
Miller, Calif.	Rogers	Waldie
Miller, Ohio	Roncalio	Wampler
Minish	Rooney, N.Y.	Ware
Minshal	Rooney, Pa.	Whalen
Mitchell	Rosenthal	Whalley
Monagan	Rostenkowski	White
Moorhead	Roush	Whitehurst
Morgan	Roy	Wiggins
Morse	Ruppe	Williams
Mosher	Ryan	Wilson, Charles H.
Moss	St Germain	Winn
Murphy, N.Y.	Sandman	Wolff
Myers	Sarbanes	Wright
Natcher	Saylor	Wyatt
Nelsen	Scheuer	Wydler
Nix	Schneebeli	Wylie
Obey	Schwengel	Wyman
O'Konski	Seiberling	Yates
O'Neill	Shriver	Yatron
Patten	Sisk	Zablocki
Pelly	Skubitz	Zion
Pepper	Smith, Calif.	Zwach

NAYS—106

Abernethy	Clay	Fisher
Abourezk	Collins, Tex.	Flowers
Andrews, Ala.	Colmer	Flynt
Archer	Conyers	Ford, William D.
Aspinall	Crane	Gettys
Baker	Daniel, Va.	Giaimo
Baring	Davis, Ga.	Grasso
Begich	Davis, S.C.	Green, Oreg.
Bevill	Dellums	Griffin
Blackburn	Denholm	Griffiths
Brinkley	Dent	Gross
Broyhill, Va.	Devine	Hagan
Burleson,, Tex.	Dickinson	Haley
Cabell	Diggs	Hall
Caffery	Dorn	Hammerschmidt
Camp	Dowdy	Hébert
Chappell	Drinan	Heckler, Mass.
Chisholm	Edmondson	Henderson

Hull	O'Hara	Sikes
Hungate	Passman	Slack
Jones, Ala.	Patman	Snyder
Jones, Tenn.	Poage	Spence
Kazen	Powell	Staggers
Kee	Purcell	Steed
Kuykendall	Randall	Stephens
Landgrebe	Rarick	Stubblefield
Landrum	Roberts	Stuckey
Lennon	Robinson, Va.	Teague, Tex.
McMillan	Rousselot	Thompson, Ga.
Mahon	Runnels	Waggonner
Mathis, Ga.	Ruth	Watts
Mills, Ark.	Satterfield	Whitten
Mills, Md.	Scherle	Young, Fla.
Mink	Schmitz	Young, Tex.
Nedzi	Scott	
Nichols	Shipley	

NOT VOTING—42

Abbitt	Gubser	Mollohan
Alexander	Hansen, Wash.	Montgomery
Anderson, Tenn.	Hastings	Murphy, Ill.
Ashbrook	Hathaway	Pryor, Ark.
Clark	Jarman	Railsback
Clawson, Del	Johnson, Pa.	Roybal
Cleveland	Karth	Sebelius
Derwinski	Kemp	Shoup
Dwyer	Long, La.	Stafford
Edwards, La.	McCormack	Sullivan
Eshleman	McCulloch	Symington
Evans, Colo.	McEwen	Udall
Frey	McKinney	Widnall
Goldwater	Mizell	Wilson, Bob

So the bill was passed.

The Clerk announced the following pairs:

On this vote:

Mr. Evans of Colorado for, with Mr. Montgomery against.
Mr. Del Clawson for, with Mr. Ashbrook against.

Until further notice:

Mr. Clark with Mr. Widnall.
Mr. Hathaway with Mr. Cleveland.
Mrs. Hansen of Washington with Mr. Goldwater.
Mr. Alexander with Mr. Derwinski.
Mrs. Sullivan with Mrs. Dwyer.
Mr. Udall with Mr. Kemp.
Mr. Karth with Mr. Gubser.
Mr. Mollohan with Mr. McKinney.
Mr. Pryor of Arkansas with Mr. Shoup.
Mr. Roybal with Mr. Bob Wilson.
Mr. Murphy of Illinois with Mr. Railsback.
Mr. Symington with Mr. Johnson of Pennsylvania.
Mr. Anderson of Tennessee with Mr. McCulloch.
Mr. McCormack with Mr. Stafford.
Mr. Abbitt with Mr. Sebelius.
Mr. Jarman with Mr. Eshleman.
Mr. Edwards of Louisiana with Mr. Mizell.
Mr. Long of Louisiana with Mr. Frey.
Mr. Hastings with Mr. McEwen.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Calendar No. 412

92D CONGRESS
1ST SESSION

S. 2515

[Report No. 92–415]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 1971

Mr. BYRD of West Virginia (for Mr. WILLIAMS) (for himself, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCGOVERN, Mr. MAGNUSON, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SCOTT, Mr. SCHWEIKER, Mr. STEVENSON, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

OCTOBER 28, 1971

Reported by Mr. WILLIAMS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To further promote equal employment opportunities for American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1971".~~

as applicable, shall govern civil actions brought hereunder. Related proceedings may be consolidated for hearing. Any officer or employee of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person or persons aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the Rules of Civil Procedure for the district courts of the United States.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such un-

lawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organizations, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title, except that (1) back pay liability shall not exceed that which has accrued more than two years prior to the filing of a charge with the Commission, and (2) interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the back pay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint ot be aggrieved an order dismissing the complaint.

"(i) After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the respondent for the elimination of the alleged unlawful employment practice and the Commission may at any time, upon reasonable notice, modify or set aside, in

may be, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a)(2) thereof, shall govern proceedings under this subsection.

"(q)(1) If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not issued a complaint under subsection (f), the Attorney General has not filed a civil action under subsection

(f), or the Commission has not entered into an agreement under subsection (f) or (i) to which the person aggrieved is a party, the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon the commencement of such civil action, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall take no further action with respect thereto, except that, upon timely application, the court in its discretion may permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action if the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than

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92D CONGRESS
1st Session

SENATE

REPORT
No. 92-415

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

OCTOBER 28, 1971.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

together with

INDIVIDUAL AND SUPPLEMENTAL VIEWS

[To accompany S. 2515]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 2515) to further promote equal employment opportunities for American workers, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill as amended do pass.

SUMMARY

The principal purpose of S. 2515 is to amend title VII of the Civil Rights Act of 1964 to provide the Equal Employment Opportunity Commission with a method for enforcing the rights of those workers who have been subjected to unlawful employment practices.

The enforcement procedures provided for in S. 2515 include the issuance of a complaint by the Commission after an investigation and efforts to conciliate, followed by a full administrative hearing on the record, the issuance of a cease and desist order by the Commission, and an opportunity for review by an appropriate court of appeals.

The bill confers upon the Commission the authority to proceed with pattern and practice cases of discrimination, and phases out the Attorney General's existing authority in such cases over a 2-year period. The Secretary of Labor's enforcement functions under Executive Order 11246 as amended relating to nondiscrimination in employment by Government contractors and Federally assisted construction contractors are transferred to the Commission.

The committee is concerned, however, about the interplay between the newly created enforcement powers of the Commission and the existing right of private action. It concluded that duplication of proceedings should be avoided. The bill therefore contains a provision for cutoff of the Commission's jurisdiction once the private action has been filed—except for the power to intervene—as well as a cutoff of the right of private action once the Commission issues a complaint or enters into a conciliation or settlement agreement which is satisfactory to the Commission and the aggrieved party.

If the Commission is able to reach a conciliation or settlement agreement with the respondent, but such agreement is not acceptable to the person aggrieved, the Commission need not proceed with the issuance of a complaint. In such event, the private right of action would be preserved.

The committee also concluded that the aggrieved person's right to institute a private action should be reactivated under certain circumstances if the Commission does not act promptly after issuing a complaint. The bill contains a provision, in section 706(q), that permits the aggrieved person to bring a civil action against the respondent if the Commission has not issued its order within 180 days after issuing the complaint. However, during the period from 180 days to 1 year after issuance of the Commission's complaint, the aggrieved person who files a private action must notify the Commission of such filing, and the Commission may petition the court to stay or dismiss the private action if the Commission shows that it has been acting with due diligence, that it anticipates the issuance of its order within a reasonable period of time, that the proceeding is an exceptional one, and that extension of the Commission's jurisdiction is warranted.

The committee believes that aggrieved persons are entitled to have their cases processed promptly and that the Commission should develop its capacity to proceed rapidly with the hearing and decision on charges once the complaint has issued. Six months is a sufficient period of time for the normal case to be processed from complaint to order, and the Commission should be required to explain to the satisfaction of the court why it needs additional time. Accordingly, when a private action is filed after the 180 day period has elapsed from the issuance of the Commission's complaint, the court ordered delay that is provided for by this section should be the exception rather than the rule, and would not be justified simply because backlogs and inadequate resources have slowed the Commission's work. The primary concern should be to protect the aggrieved person's option to seek a prompt remedy.

It should be noted, however, that it is not the intention of the committee to permit an aggrieved party to retry his case merely because he is dissatisfied with the Commission's action. Once the Commission has issued an order, further proceedings must be in the courts of appeals pursuant to subsections 706(k)–(n).

The committee would also note that neither the above provisions regarding the individual's right to sue under title VII, nor any of the other provisions of this bill, are meant to affect existing rights granted under other laws.

INDIVIDUAL VIEWS OF MR. DOMINICK

Since enactment as part of the Civil Rights Act of 1964, Title VII has stood as a national commitment to the elimination of all forms of employment discrimination. Unfortunately, such a commitment has remained only a statement which, because of the lack of enforcement machinery, has not been translated into concrete realities for those in the nation's workforce who have been denied employment benefits because of their race, color, religion, sex or national origin. The issue is no longer whether we need enforcement powers for Title VII, but rather what form and scope of enforcement is needed to best protect the rights of all parties involved. To accomplish this end the Senate is given two types of enforcement machinery to choose from—vesting EEOC with cease and desist powers or giving EEOC the authority to sue directly in Federal Courts.

Elemental Arguments Misleading

It is overly simplistic to argue as many have, that protection of employees rights can best be achieved by vesting the present pro-employee Commission with as much enforcement power as possible. The vicissitudes of Presidentially appointed Boards is legend. The administrative Board possessing enforcement powers most similar to the cease and desist powers advocated by the majority, the National Labor Relations Board, provides the best example of this. Critics charge that the NLRB, in reacting to political winds rather than stare decisis, have fluctuated from pro-management decisions during the Eisenhower Administration to pro-labor positions during the Johnson and Kennedy Administration. Determination of employment civil rights deserves and requires non-partisan judgment. This judgment is best afforded by Federal court judges who, shielded from political influence by life tenure, are more likely to withstand political pressures and render their decisions in a climate tempered by judicial reflection and supported by historical judicial independence.

Likewise simplistic reasoning has classified proponents of court enforcement as being pro-respondent or anti-employees' rights. Nothing could be less correct. Both procedures seek to achieve the same end—the fair redress of employees' grievances. Although I opposed the cease and desist provisions, I voted to report S. 2515, as amended, out of committee favorably as I was most encouraged by the potential relief its compromise amendments offered federal employees. As the report indicates, these employees are the most frustrated in achieving equal employment opportunity. I authored an amendment with Senator Cranston which was adopted that provided the approximately 2.6 million civil service and postal workers with court redress of their employment discrimination grievances. The amendment creates machinery suggested by Clarence Mitchell, Director, Washington Bureau,

law has developed in a liberal fashion appropriate to a humanitarian and remedial statute. The implementation of Title VII gives hope for the future of all Americans.

Court Enforcement Provides an Expeditious and Final Remedy

Effective protection of the rights of both the employer and the employee demands a speedy resolution of the dispute. Facts indicate that the court enforcement procedure is more expeditious as it involves a one step enforcement procedure whereas the cease and desist order requires two steps. A district court order is immediately self-enforcing as it is backed by court contempt proceedings. A commission cease and desist order must be brought to the Court of Appeals before it achieves similar sanction power. Additionally, there is a definite advantage in having the judge who enters the original order be the person who will hear any subsequent enforcement proceedings. A judge who is enforcing his own orders rather than those of some commission will be determined that such orders are properly enforced.

To a large extent, speedy resolution of an unfair employment practice will be determined by the respective caseloads of the EEOC and the district courts. Chairman Brown of the EEOC testified that as of June 30, 1971, the Commission had a backlog of 32,000 cases with an anticipated fiscal year 1971 caseload of 32,000 additional cases. Also S. 2515 would expand coverage from the present employers with 25 or more employees to those with 8 or more employees, thereby adding approximately 6.5 million potential aggrieved. Additionally, the EEOC will be responsible for conciliating disputes of an additional 10.1 million State and local government employees pursuant to the adopted Eagleton-Taft amendment. While the present EEOC complaint disposition requires from 18 to 24 months, the median time interval from issue to trial for non jury trials in U.S. district courts in 1970 was ten months according to the Annual Report of the Director of the Administrative Office of the U.S. Courts. Congressman Erlenborn testified before the Labor Subcommittee that of the 29 District Courts which would receive the brunt of the unfair employment practice cases from the top ten states in terms of EEOC recommended investigation, 21 courts had a medium time of 12 months or less for non jury trials and 8 courts had a medium time of 6 months or less for a non jury trial.

In addition, a further impediment to timely action under the administrative approach is that only the Commission in Washington and not any of the field attorneys could issue cease and desist orders. The judicial approach offers potential remedies through 398 judges on the bench in 93 existing federal district courts.

Hopefully, the above discussion will serve to better clarify an issue which in the recent past has been the subject of much rhetoric and little objectivity.

Transfer of "Pattern and Practice" Unjustified

In addition to the previously discussed major issue, I am concerned by the provision of S. 2515 which transfers "pattern and practice" suits from the jurisdiction of the Justice Department to the EEOC.

[From the Congressional Record—Senate, Nov. 8, 1971]

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENT NO. 609

(Ordered to be printed and to lie on the table.)

(A copy of amendment No. 609 to S. 2515 may be found on p. 551.)

Mr. Ervin submitted an amendment, intended to be proposed by him, to the bill (S. 2515) to further promote equal employment opportunities for American workers.

AMENDMENT NO. 611

(A copy of amendment No. 611 to S. 2515 to be found on p. 553.)

(Ordered to be printed and to lie on the table.)

Mr. DOMINICK. Mr. President, on behalf of myself, Mr. Baker, Mr. Brock, Mr. Buckley, Mr. Ervin, Mr. Fannin, Mr. Hollings, and Mr. Tower, I introduce for printing and future appropriate consideration an amendment to S. 2515, the Equal Employment Opportunities Enforcement Act of 1971. Essentially, the amendment strikes all language vesting the Equal Employment Opportunity Commission with cease-and-desist powers and substitutes therefor language giving the EEOC power to bring employment discrimination disputes to Federal court for resolution.

The amendment does not affect present bill language which: first, improves the respondent's rights of due process by requiring a 10-day notification of the filing of a Commission charge and a 2-year limitation of back pay liability; second, provides procedures whereby approximately 10.1 million State and local government employees and 2.6 million civil service and postal workers can redress their employment discrimination grievances through Federal district courts; third, expands the coverage of Commission jurisdiction to those private employers of eight or more employees; fourth, does not limit aggrieved employes to only Title VII remedies or limit class action; and fifth, transfers the Justice Department's "pattern and practice" suit jurisdiction and the Labor Department's Office of Federal Contract Compliance to the EEOC.

Mr. President, what this amendment would do is to guarantee the protection of both parties' rights through fair, effective, and expeditious Federal court machinery. It would avoid the legendary vicissitudes or presidentially appointed boards and vest adjudicatory power where it belongs—in impartial judges shielded from political winds by life tenure. Judges who render their decisions in a climate tempered by judicial reflection and supported by a historical judicial independence influenced only by stare decisis. This amendment permits the aggressive and active advocacy of equal employment opportunity

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92d CONGRESS
1st Session

S. 2515

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1971

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK (for himself, Mr. BAKER, Mr. BROCK, Mr. BUCKLEY, Mr. ERVIN, Mr. FANNIN, Mr. HOLLINGS, and Mr. TOWER) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 33, after line 24, insert the following:

"SEC. 4. (a) Paragraph (6) of subsection (g) of section 705 of the Civil Rights Act of 1964 (78 Stat. 258; 42 U.S.C. 2000e–4) is amended to read as follows:

"'(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of ap-

pellate proceedings in accordance with subsection (j) of this section, as redesignated by section 4(d) of the Equal Employment Opportunities Enforcement Act of 1971, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.'

"(b) Subsection (h) of section 705 of such Act is amended to read as follows:

"'(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, except that the Attorney General shall conduct all litigations to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commissioner.'"

On page 34, beginning with line 1, strike out through the end of the parenthetical in line 3 and insert in lieu thereof:

"(c) Subsections (a) through (e) of section 706 of such Act."

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Com-

mission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge. If the Commission fails to obtain voluntary compliance and fails or refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance."

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stituting what we believe is a fast, a fair, and a more efficient procedure—the EEOC hearing procedure—for the logjammed Federal courts, with their lengthy delays and great time consuming judicial processes, this will provide due process of law because the prosecutor and the judge are two distinct entities. So that this amendment, in a nutshell, would simply provide that the prosecutor and the judge not be the same person, shall not be in the same line of command, and shall not be responsible to the same people.

This amendment would give the President the right to name an independent EEOC General Counsel who would report solely to him. It would be his duty and his function to decide what cases to prosecute and what cases not to prosecute from the cases presented to him where injustice is alleged on the basis of race, color, creed, or sex. This would assure that once the prosecutor makes the decision to prosecute on the basis of discrimination, the judge and the jury in this case would be separate and distinct and will be, in effect, the new Equal Employment Opportunity Commission.

I can think of no better way to insure that the new and hopefully faster, more efficient system in S. 2515 will operate justly toward all Americans. Our amendment will protect the parties on both sides of the dispute and assure that the prosecutor and the judge come from two different appointment procedures and have two different responsibilities. In this case the prosecutor goes directly to the President himself for his appointment, and for advice and consent of the Senate.

This is a fair amendment. It is in keeping with our Nation's judicial history, judicial customs and our judicial system. It makes crystal clear the fact that we are tryng to achieve, by this bill, and this amendment, a fast, efficient, and fair way to determine where alleged injustices exist in our society and to provide a way whereby, once proven to exist, they can be decided expeditiously so that the people most involved will know they can get a quick and fair hearing, for "justice delayed is justice denied."

I urge, Mr. President, the adoption of this amendment giving to the Equal Employment Opportunity Commission under our bill a new independent General Counsel's Office.

The PRESIDING OFFICER (Mr. Gambrell). The question is on agreeing to the amendment of the Senator from Ohio.

Mr. WILLIAMS. Mr. President, I first want to state that, as manager of the bill, I am in agreement with the amendment which has been offered by the Senator from Ohio and fully explained by the Senator from Pennsylvania. It will make a substantial contribution to the substance of this legislation. It certainly meets many of the anxieties felt about the bill as it now exists.

This amendment calls for the establishment of a General Counsel's Office in the Equal Employment Opportunity Commission, which, though a part of the Commission and empowered to act in its name is to be independent of its control. The purpose of the amendment is to insure that the prosecutorial and decisional functions of the Commission will be firmly separated and to eliminate any lingering notion that the Commission would be involved in a conflict of acting as prosecutor and judge.

Under the scheme of the Civil Rights Act of 1964, the Commission was established as an investigative body to facilitate a statutory scheme

then the powers to decide whether or not the violations are in fact in existence, and if they are, to issue appropriate judicial orders.

We used to have a word for this in the old English common law. They used to call it a Star Chamber proceeding, where one person or one group would have the power to issue the rules, decide whether there has been a violation, and then impose the punishment. That is exactly what the cease-and-desist procedure would do.

It seems to me it is far more beneficial, from an overall governmental policy standpoint, to separate these functions just as we have them in the three branches of Government under the federal system. Second, it also seems to me that looking at it from the point of view of those who feel that they have been discriminated against, they are going to get a much more objective hearing before the courts than they would before this particular body, the EEOC, and that they will get a much more expeditious hearing. As I believe, has probably been pointed out already by the distinguished manager of the bill, the EEOC now, without cease-and-desist authority and without the additional coverage provided by this bill, is 32,000 cases behind, with over a 20-month backlog, in determining and resolving unlawful employment practices. I do not care who it may be, or how long they may have been claiming discrimination, if they have to wait 20 months before they even find out whether or not the Commission feels that the charge is valid, all one can say is that justice delayed is justice denied.

The average backlog of the Federal district courts at the present time is about 12 months. So my amendment would immediately speed the process of justice up by 8 months by tranferring these matters to the Federal district courts, rather than keeping them within the Commission, even if there were no additional employees put within the jurisdiction of the Commission.

We have, however, greatly enlarged the Commission's jurisdiction. We are adding approximately 10.1 million State and local employees, 6.5 million private employees of small employers, and 4.3 million educational employees. Thus, we are talking about an expanded coverage of approximately 21 million-potential aggrieved.

Interestingly enough, there has been a trend in recent EEOC investigations concerning alleged discriminatory cases involving sex discrimination. Are women being given unfair treatment or, conversely, are they being given preferential treatment? In either situation, the person who feels aggrieved has charged sex discrimination and is bringing these cases before the EEOC at the present time. Additionally, there will be the need, under cease-and-desist powers if they are left in the bill, for the training of hearing examiners who will have to set up special courts or special hearing rooms within the Commission. These hearing examiners will need to be trained in the subtleties of what is or is not discrimination. It will take almost 2 years to get the necessary number of trained people on board in order to accomplish these demands. Each one of these factors, as I see it, simply adds to the problems of discrimination in employment and frustrates the resolution thereof.

One thing that I think all of us in this body, regardless of who we are, would like to get rid of is discrimination, particularly when it involves something as essential as someone's livelihood. My feeling,

to put employees holding their jobs, be they government or private employees, on the same plane so that they have the same rights, so that they have the same opportunities, and so that they have the same equality within their jobs, to make sure that they are not being discriminated against and have the enforcement, investigatory procedure carried out the same way.

I do not see the difficulty in that concept. So I would say once again that any thought that this amendment is anti-employee or anti-civil rights is plain ridiculous.

I know that there are many people, including the manager of the bill, who disagree with my approach, and who perhaps think that it will clog the courts. I must say, that although those arguments can be made, with 93 courts already established, and with the independent General Counsel that has just been created for the EEOC itself, we would now have the legal machinery to move rapidly on the enforcement of whatever legitimate complaints may come before the EEOC which cannot be solved by conciliation.

So, once again I would urge that, on the merits, this particular amendment be adopted.

Mr. President, just a few minutes ago I was talking about the caseload that the Commission has. I think it might be worthwhile to get all these facts initially in the record at this point.

Chairman Brown of the EEOC testified that as of June 30, 1971, the Commission had a backlog of 32,000 cases. It anticipated that a load of 32,000 new cases would come in fiscal year 1972, and 45,000 in fiscal year 1973.

As of February 1971, almost a year ago, EEOC complaints required from 18 to 24 months for disposition.

To this already substantial backlog, we must add the impact of the more complex and time-consuming cease-and-desist procedures as they are maintained in the bill.

Mr. President, we must also consider expanded coverage. Included for the first time in the expanded coverage, as I pointed out, are approximately 6.5 million employees of small employers—those employing between eight and 25 employees; 4.3 million educational employees—teachers, professional and nonprofessional staff members; and 10.1 million State and local governmental employees whose disputes are to be conciliated prior to going to the Attorney General for court action, as I pointed out just a little while ago.

Thus, the EEOC will be responsible for an additional 21 million potential aggrieved personnel.

Now it seems to me that if we look at this in any kind of logic, and with real care, we can see immediately that the added load will require not only a great increase in administrative staff in the EEOC but is also going to mean a much longer backlog before any case can be decided.

As I said earlier, it seems wrong to me to say to an aggrieved employee, "Certainly we will hear your case. We will do the investigating. We will bring the charges. We will do everything else, but you will not get a decision for over 2 years." That is not justice. This is not equal employment opportunity. But if we have the investigator saying that this is a legitimate complaint, and that it will be brought to the district court and will get priority treatment there, we can get the matter decided in half the time it would take in any other way.

language. My amendment does not affect present bill language which improves the respondent's rights of due process by requiring a 10-day notification of the filing of a commission charge or the 2-year limitation of back pay liability. It does not affect bill language whereby approximately 10.1 million State and local government employees can seek redress of their grievances through Federal district courts. This amendment does not change a committee-adopted amendment authored by Senator Cranston and me creating machinery suggested by Clarence Mitchell, director, Washington Bureau, NAACP. The machinery provides a remedy procedure for the approximately 2.6 million civil service and postal workers whereby an aggrieved employee has the option, after exhausting his agency remedies, of either instituting a civil suit in Federal district court or continuing through the Civil Service Board of Appeals and Reviews to district court, if necessary. Curiously enough, the majority members of the committee seem pleased with ultimate court enforcement procedures for 2.6 million Federal employees and 10.1 State and local government employees, but continue to urge cease-and-desist procedures for private employees.

Why this is not discriminatory in and of itself, I find hard to realize.

The amendment does not affect the expanded coverage provisions in the bill concerning small employers, State and local government employees, or educational institution-employees. Additionally it leaves undisturbed S. 2515 language transferring Justice Department "pattern and practice" suits and Labor Department's Office of Federal Contract Compliance to the EEOC. Finally, the amendment does not limit aggrieved employees to only Title VII remedies or bar class action suits.

My understanding is that amendments on all these points will be brought up at a later date for decision by the Senate, but this amendment does not affect any of them.

What the amendment does do is to provide for trial in the U.S. district courts whenever the EEOC has investigated a charge, found reasonable cause to believe that an unlawful employment practice has occurred, and is unable to obtain voluntary compliance. The Commission would have complete authority to decide which cases to bring to Federal district court and those cases would be litigated by Commission attorneys. Once a Federal district court had issued a decision and order in a case, appeals litigation in a U.S. Court of Appeals or the U.S. Supreme Court would be conducted by the Attorney General's office. An aggrieved person whould retain the right to commence his own action in Federal court if the EEOC dismissed his charge.

This amendment protects the rights of both respondents and aggrieved by providing a fair, effective, and expeditious resolution of the dispute.

I might point out here, Mr. President, that my amendment simply takes the enforcement procedure down one level in the court system and out of the hands of the executive agency. The enforcement procedures, as the bill proposes, puts adjudicatory power in the hands of the the executive agency with appeal to the court of appeals. What we are doing is avoiding star chamber procedure in the executive agency system, which has not worked in the past and which we do not believe will work in this situation.

Whereas the court approach preserves the traditional separation of powers which we as a nation so highly cherish, the cease-and-desist procedure seriously threatens the respondent's due process rights in a star chamber procedure which joins the prosecutory function with the adjudicatory function. Under a cease-and-desist proceeding the EEOC would investigate the charge, issue the complaint, prosecute the complaint, adjudicate the merits of the case, and seek enforcement of its decisions in the U.S. Circuit Courts of Appeals. Elemental concepts of fairness and due process require an impartiality in the adjudicatory function which could not be attained under S. 2515, but could be under my amendment if agreed to.

This amendment provides a combination of the expertise of the EEOC in investigating, processing, and conciliating unfair employment cases with the expertise and independence of the Federal courts. An expertise, which as I mentioned earlier had exhibited unusual understanding of the rights of minorities in areas of public accommodations, voting rights, education, housing and equal employment. The equal unemployment area is one which produces strong emotions among all parties— those discriminated against, those accused of discriminating, and even those charged with enforcing the law. I believe that these strong emotions should be tempered by restraint when the adjudication of personal rights is at issue. The Federal courts are best able to provide the tempering restraint which will allow for a rational resolution of the issues of any given case.

Mr. President, to interpolate for a minute, as I reported yesterday, my recollection of the evidence is that approximately 30 percent of the cases which are being filed now—at least in excess of 20 percent are related to sex discrimination. And when we get an angry woman who feels she has been discriminated against in her job or in getting her job, we have really got emotions running high. And we have the same situation involved when a man is being discriminated against or thinks that he is being discriminated against because he is not a female. These are matters that go on and on and on. They get much more difficult to handle through voluntary compliance or an executive agency level than if we had some totally impartial method of solving the disputes.

In my opinion, we do not get adequate impartiality with cease-and-desist orders or with the EEOC having the untrammeled discretion to impose unreasonable employment relation requirements. Everybody is mad.

If we have an impartial court proceeding, we would have much faster action, much more impartiality, and some ability to temper the heat of the issues involved.

As I ponted out, effective protection of the rights of both the employer and the employee demands a speedy resolution of the dispute. Facts in addition to the previously discussed backlog problems indicate that the court enforcement procedure is more expeditious as it involves a one-step enforcement procedure whereas the cease-and-desist order requires two steps. A district court order is immediately self-enforcing as it is backed by court contempt proceedings. A commission cease-and-desist order must be brought to the court of appeals before it achieves similar sanction power. Additionally, there is a definite practical advantage in having the judge who enters the orig-

such as we here encounter. The district courts are experienced in handling civil rights matters, having in recent years dealt effectively with a broad spectrum of civil rights cases, including those involving employment discrimination.

And adjudication by the Federal courts will provide the consistency and continuity which is a vital element of our judicial process.

Court enforcement, therefore, offers a more fair and equitable representation of the interests of both employee and employer. In addition, court enforcement offers a more expeditious settlement, and a speedy resolution is vitally important both to an aggrieved employee and to a respondent employer.

Presently the EEOC has an enormous backlog of cases under investigation, and the disposition of a complaint requires from 18 to 24 months. S. 2515 adds 6.5 million nongovernmental employees and 10.1 million employees of State and local governments to the EEOC's jurisdiction, so obviously the backlog of investigations and the time required for processing them can be expected to increase in the future. If the Commission is given cease-and-desist authority, the time required for completion of the adjudicatory process will obviously be considerable—and it must be remembered that the cease-and-desist order must be brought to a Federal court of appeals before it achieves a sanction power similar to that of the order a district court judge would enter at the end of a court enforcement process.

In 1970, the median time interval from issue to trial in nonjury cases in U.S. district courts was 10 months. Clearly, this avenue offers the aggrieved employee and the respondent employer a faster answer to his problem. Furthermore, it is relevant to consider that this prospect of swift resolution in court should encourage settlement by conciliation of a larger percentage of cases, thereby helping the Commission handle its tremendous investigative and conciliation responsibilities more quickly.

If the resolution of employee discrimination cases is fairer and faster under the court enforcement procedure, what possible reason is there to depart from this traditional means of administering justice in the United States? Proponents of the cease-and-desist authority lean heavily upon the arguments which have been advanced in granting this authority to executive agencies in other areas: First, that a special expertise in a technical field is required of the adjudicating officer; and second, that putting such cases in the Federal courts would clog the Federal judiciary system. Neither argument stands up in this case.

Civil rights is not a highly technical area. It is a matter of human understanding and common sense, qualities possessed as fully by Federal judges as by potential nominees to the EEOC.

The district court judges have shown in recent years their capacity to resolve civil rights disputes in areas such as housing, public accommodations, and school integration. Furthermore, because of the respect with which the Federal judiciary is viewed, their decisions have greater immediate impact and moral sanction than would the decision of an executive administrative agency.

I see no way that the court enforcement procedure would clog the Federal courts. There are 398 Federal district judges to hear those cases which the EEOC does not resolve by conciliation. In fiscal year 1970, only 732 of 20,122 charges received by the EEOC failed a solu-

discrimination in employment and to try to resolve grievances through conciliation procedures. The Commission had no mandate to enforce fair employment practices and I believe that deficiency should be remedied.

In restructuring the functions of the Commission, I feel that we should have two goals in mind—the establishment of a procedure which is both fair and efficient.

The public is entitled to have its business handled by Government in an efficient manner. One of the criticisms most often aimed at administrative agencies is that they are notorious in their inefficiency in handling the caseload before them. For example, it has been estimated that the median time in days elapsed in processing NLRB unfair labor practice cases, from filing to decision, amounted to 323 days in 1970. The present EEOC complaint disposition requires from 18 to 24 months. I do not feel that it is fair for the Government agencies to keep either respondents or complainants waiting years before matters in which they are vitally interested are disposed. In restructuring Government agencies such as the EEOC it is incumbent upon Congress to show some imagination to fashion procedure that will provide for a speedy resolution of pending business.

Equally important is that the procedures be equitable. Fundamental to our system of justice is fairness. In our desire to achieve equal employment opportunity we must be fair to both the respondent and complainant. We cannot forsake the principle that anyone charged with violating the law is presumed innocent until proven guilty. He is entitled to be tried by an impartial tribunal. This calls for a disinterested party sitting as the judge of the case. The policeman and the prosecutor cannot sit as judge. If fairness is to be achieved, we must divide the function of prosecution from the function of adjudication.

My objection to S. 2515 as written is not with its objective but with its proposed means for achieving the stated end. Under S. 2515 the EEOC would be able to issue a complaint, to conduct hearings, to issue cease-and-desist orders, and to include in an order such things as demands for reinstatement for back pay, or for the company to report regularly to EEOC on how it is complying with the order. This approach is not fair in that it gives the EEOC czar-like powers of policeman, prosecutor, judge and jury. It violates the fundamental demand for separation of these powers.

Nor would efficiency be served under the provisions of S. 2515. If the EEOC is unable to handle the case load under the present arrangement, there seems little likelihood it could expeditiously dispose of additional responsibilities. It would take an enormous number of new employees and attorneys to handle this case load and it could easily take as long as 3 years before a case is disposed.

In the alternative, the Dominick proposal to empower the EEOC to sue in district courts when conciliatory efforts fail would achieve the objective of strengthening enforcement of equal employment opportunity under a fair and efficient procedure. Fairness is promoted under the district court approach by separating the functions of the policeman, the prosecutor, and the judge. A fair trial and due process are guaranteed to the accused.

Carolina (Mr. Ervin) described the amendment best when he characterized its contribution toward an equitable enforcement procedure as being similar to starting off on the lengthy trip to heaven by stopping off at the first saloon on the way. I personally voted for the amendment because it does represent a first step, albeit into the saloon, toward impartial court enforcement of unlawful employment practices.

It is a step into the saloon, though, as it misleads many people into believing that an independent General Counsel actually will cure the defects and inequities of cease-and-desist enforcement. I submit that it will do no such thing. Its chief accomplishment will be to provide salve for the conscience of cease-and-desist proponents and throw a rather skimpy bone to respondents whose due process rights will continue to be violated.

An independent General Counsel is not the panacea for cease-and-desist enforcement because it does not even address itself to crucial problems inherent in the mechanism which frustrate employment grievance resolution.

Perhaps the most crucial defect the cease-and-desist mechanism promises is administrative snarls and unconscionable backlog delays. I say "promises" because use of a weaker verb would be misleading. What else can you expect from a system faced with an expanded jurisdiction of approximately 21 million potential aggrieved, substantial new "pattern and practice" and Federal contract compliance responsibilities, more complex and time consuming proceedings, only one available tribunal to issue cease-and-desist orders, and a staff lacking approximately 100 trained trial examiners, when the present Commission backlog is over 32,000 cases and approximately 20 months on just investigation and conciliation cases? Contrast this with an existing Federal district court system of 93 courts and 398 judges with established reputations for fairness, discretion and impartiality and a present median backlog, according to the most recent figures available, of 10 months from issue to trial.

Additionally, utilization of the courts as initial adjudicators of Title VII actions will substantially increase the likelihood of voluntary settlements and thereby reduce the number of cases presented to the courts.

The imminence of court action, coupled with the threat of adverse publicity and immediately enforceable orders will serve as a powerful inducement to voluntary settlements.

A further factor that must be considered when determining the expediency of the two procedures is the effectiveness of the enforcement order. The independent General Counsel does not address itself to the defects in the cease-and-desist procedure which requires a two-step enforcement. The district court makes decisions and renders appropriate orders immediately enforceable by contempt citations issued by a person knowledgeable of the facts—the judge who heard the case and entered the order. On the other hand, a reluctant respondent who disregards a Commission-entered cease-and-desist order cannot be compelled to comply with the order by the Commission. Instead, the Commission must petition an appropriate U.S. Court of Appeals, file the Commission hearing record, and then prove that their findings are supported by substantial evidence in the record before a

judge not familiar with the case enforces an order that he originally had no part in entering. Now the reluctant respondent is subject to contempt proceedings if he disobeys the Court of Appeals dictates. If the Commission wants to avoid showing that the findings are supported by substantial evidence in the record, they can wait for 60 days after the issuance of the order, at which time their findings are recognized by the Court as being conclusive.

This, in and of itself, puts enormous power in the hands of the Commission.

The ineffectiveness of the two-step cease and desist enforcement procedure and its concomitant delay is best put into perspective when one realizes that with a similar enforcement procedure under the National Labor Relations Board, more than 60 percent of the enforcement orders in fiscal year 1967 had to go to the court of appeals. Arnold Ordman, past General Counsel of the NLRB, told the Separation of Powers Subcommittee on March 29, 1968, that the number of Board decisions proceeding to the courts of appeals were increasing from the 54.3 percent in fiscal year 1973. Contrast these figures with the 1969 annual report of the Director of the Administrative Office of the U.S. Courts which indicates that only 7 percent of all U.S. district court decisions were appealed. However expeditious and effective cease-and-desist orders may be, if almost two-thirds of the disputes must ultimately be taken to the court of appeals, it seems obvious that they are not getting the quick resolution of the dispute that is considered to be necessary by the people who are supporting this bill.

Also these figures present the most convincing testimony possible concerning the public's confidence in decisions rendered by politically appointed boards. The public generally and the respondents specifically realize that these quasi-judicial decisions are quite often politically inspired and as such will not stand up to the nonpartisan judgment of the courts of appeals. On the other hand, public confidence in Federal court judges utilizing stare decisis is such that approximately only one out of 15 of their decisions is appealed.

If the Senate is truly interested in an effective, expeditious grievance resolution procedure we should place our trust in our Federal court system. Although cease and desist promises much, a shiny new administrative procedure designed to redress grievances is no better than its performance, and if it requires 2 to 3 years to achieve justice, its potential is nothing but a frustrating promise of what might have been.

Our Federal court system provides an established forum of known performance. Let us not gamble with the rights of both respondents and aggrieved on a most suspect administrative procedure when we can rely on our court system.

Another cease-and-desist defect which the independent General Counsel fails to remedy is that of increasing concentration of Executive power. As I mentioned last Friday, legislative concessions of power—in this case a clearly judicial function—to the executive branch threatens concepts of separation of power and checks and balances which our Founding Fathers thought imperative to our tripartite system of government. It seems incongruous to me for my colleagues to continually complain about the excessive abuses of power exercised

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Mr. WILLIAMS. Well, if it is in support of the amendment, the Senator can seek the generosity of the Senator from Colorado. What is the Senator's wish?

Mr. ERVIN. I wanted to ask the Senator if this bill does not extend the coverage of this act——

Mr. WILLIAMS. Fortunately, yes.

Mr. ERVIN (continuing). To millions of additional employees of private industry, and at least 10 million employees of States and local subdivisions of States.

Mr. WILLIAMS. I say gratefully, yes.

Mr. ERVIN. It also enables the political hands of Caesar to be laid upon the sacred things of God. And each one of these cases where any of these things occur is subject to be reviewed in the Federal courts, is it not?

Mr. WILLIAMS. I would say that equality of rights has nothing to do with Caesar, and maybe had more to do with God.

Mr. ERVIN. I would say you do not get equality of rights by robbing the majority of their rights, and that is what this bill will do to the majority of the people of this country. But apart from that——

Mr. WILLIAMS. I do not think any one has a right to discriminate against a person because of religion, race, sex, or national origin.

Mr. ERVIN. I do not think Congress has a right to authorize Caesar to lay his political hands upon the affairs of God and that is exactly what this bill does.

Mr. WILLIAMS. I interpret God's mandate to man differently than the Senator from North Carolina.

Mr. ERVIN. But apart from that question, every one of the cases that arises affecting any one of the millions of additional employees of private industry which are brought under the bill and the more than 10 million State and local employees would be subject to be reviewed by the Federal courts under the bill in its unamended form, would they not?

Mr. WILLIAMS. The appeals procedure is here, and the court of appeals is written in clearly as the court of review.

Mr. ERVIN. So this will increase rather than diminish the cases in the Federal courts, regardless of whether the amendment of the distinguished Senator from Colorado is adopted or rejected, will it not?

Mr. WILLIAMS. The Senator, of course, knows that Chief Justice Burger was referring to the case load in district trial courts.

Mr. ERVIN. Which goes to show that when a man gets to be a Federal judge he is just like every other man who gets a Federal job: The first thing he wants to do is have his duties lightened, and the next thing he wants is to have his salary increased. This shows that Federal judges are as human as other people.

Mr. WILLIAMS. I am not going to argue that. When we look at the caseload of the district courts, which has been included in the Record at the request of the Senator from New York, I am not proud of the fact that from the inception of a case in the State of New Jersey to its conclusion, the time has now reached 29 months. I am not proud of that. Justice delayed, it has been said by wiser authorities than this Senator, is justice denied. Twenty-nine months is a long, long time in the district courts of the State of New Jersey.

I will state that in the State of North Carolina, in the eastern district, 20 months is the time from the filing of an action to a decision in the case, and that is too long.

But be that as it may, with time running, I have no further requests but to say, without yielding back the few minutes that I might have, Mr. President, that it is suggested here, in support of this amendment, by some of the debaters, that we are introducing a monstrous and unfair procedure in this area of equal employment opportunity. This is so far from what is being done by the legislation. A time honored procedure for enforcement, with all the protections for due process and fairness included, is exactly what we have done, a method that is being used in all the other administrative agencies of importance, that is being used in 34 of the 38 States that have human rights commissions and have a guarantee that there will be equal employment opportunity.

So it is far from anything new. What this proposes is that the Federal protections, constitutional protections, of equal opportunity be given the same enforcement procedures in the administrative agencies that exist in all the economic agencies of the Federal Government, that exist in most of the States that have human rights commissions or divisions or sections.

Mr. DOMINICK. I yield myself 3 minutes.

Mr. President, I want to make some brief points. I have listened very carefully to the proponents of the system as is presently contained in the bill—namely, the cease-and-desist authority. So far as I can see, they say that a court enforcement system would take longer and that cease and desist has been used in other cases, and therefore we ought to use it for equal employment.

I do not think either one of these is a very compelling argument, because we have testimony—which I have already referred to—that indicates that there is now a backlog of more than 20 months in the EEOC, just on compliance and mediation cases. If you expand their jurisdictional control by 21 million people, expand the procedural complexities by giving them cease-and-desist authority and say they are going to need 100 attorneys or more—about which we have testimony—and they are going to do it all within their one agency, you obviously are not going to have 20 months' delay but more than 3 years' delay.

In addition, facts I presented indicate that cease and desist procedures stimulate circuit court of appeals procedure, so you have just as much a burden, if not more in the circuit courts, as you would if they originated cases in the district courts as my amendment does. I think that argument is not supported by the facts.

The second point is that in the discussion of this bill in committee, we considered what should be done about State and local employees, and we gave them a right to proceed through the Attorney General into the court system and not be subject to cease-and-desist orders. We gave the Federal employees the right to go through their agency and then go either to the Civil Service Commission Board of Appeals and Reviews or to the court. But in the case of private employees, this bill says that they cannot use the court system; they cannot be like the other people covered under this bill. They will have to redress their grievances through the cease-and-desist machinery without ever getting to the district court.

filed with the Commission within 30 days after the expiration of any period of reference under subsection (c) or (d), the Commission has been unable to obtain voluntary compliance, the Commission may bring a civil action.

Whereas the language of the present amendment gives the Commission the discretion to file an action, this language requires that the Commission "shall" bring a civil action.

Without trying to be too technical or too difficult about it, I believe that "shall" defeats the purpose of the 30-day delay which is simply designed to try to get, as they say in the delivery business, "a burr under the tail" of the parties. But I do not see why we should require them within 30 days to bring suit. They might be able to accomplish voluntary compliance within 40 days or it might take 32 days, but under the language of this amendment what happens if they do not file suit within 30 days? Then what do we do?

In other words, I think that the word "shall" in the second line of the Senator's amendment should be changed back to the word "may," as is the case, if the Senator will look through his amendment, to the question of whether the person aggrieved is going to sue or not going to sue.

I would therefore ask the Senator whether he would be amenable to changing that?

Mr. JAVITS. May I point out that the reason we included "shall" is, in a sense, that it goes with the original bill. If the Senator will be kind enough to refer to page 38 of the bill, subsection (f), which deals with this particular matter, he will see that it says:

> (f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon any respondent not a government, governmental agency, or political subdivision a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court.

In other words, having found reasonable cause, the Commission, according to the original bill, is required to serve a complaint, and so forth.

Mr. DOMINICK. May I continue to point out that what we are trying to do whenever we can is to have the unlawful employment practice charge solved by voluntary compliance. I think that all of us would prefer to see this rather than a commission filing a cease-and-desist order, or as in my amendment, having to go to court. I point out to the Senator that although the word "shall" is in subsection (f) on page 38 of the original bill, the difference between that situation and the one posed by the amendment which I have prepared is the fact that there is no time limit in subsection (f) in which the Commission has to determine when voluntary compliance is or is not possible. So that there is no 30-day limit. All I am saying is that we are putting a 30-day limit where we are saying, "OK. If you have not settled by that time, we have the right to go to court."

It would seem to me that in the interest of flexibility of the Commission's schedule, and in the interest of flexibility in working something out through voluntary compliance, it would be far better to put in the word "may."

If the Senator from New York will change that word "shall" to "may," I shall be happy to accept the amendment.

Mr. JAVITS. May I ask this of the Senator: If we do that, if we change the word "shall" to "may," do we not have to have some cutoff time as far as the Commission is concerned, with respect to its exercise of that discretion in bringing a civil action assuming, for example, of the Senator's amendment—if within 30 days after a charge is filed with the Commission or 30 days after a period of reference in subsection (c) or (d)—this relates to State and local governments references and the Commission has been unable to obtain compliance, the Commission may bring a civil action. Would not the Senator agree that if we are going to adopt that suggestion, that we leave it at "may," we have to put some termination date upon the Commission itself so that the complainant may sue without necessarily sitting around awaiting 6 months.

Mr. DOMINICK. I had thought that we then go on with the rest of the Senator's amendment. We can shorten the 180-day private filing restriction as far as I am concerned, but I think we should keep in mind that this is a Commission which has been appointed for the purpose of trying to solve any employment discrimination that there may be and, consequently, I do not think that we should assume they will not take action where there is a clear case. Problems will arise where there are gray areas, or where they are not sure whether they have substantial evidence to support a case. Under those circumstances, it would seem to me that we should give them more time. If we want to say 90 days from the filing of such a charge, or on the expiration of any period, instead of 180 or 120, that is all right with me. If the Senator would do that, then we are changing the timetable which the committee has already worked out in the process of trying to determine what should be done with enforcement procedures.

Mr. JAVITS. In view of the disposition of the Senator to come to some agreement on this amendment, so that we shall not proceed improperly, I should like to suggest the absence of a quorum, if that is agreeable, and we will take a short quorum break, with the time being charged to both sides, so that we can do our best to work out some language which will carry out our intentions, in view of the fact that, in principle, the Senator thinks there is equity to this amendment.

Mr. DOMINICK. That will be fine with me.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum with the time to be charged equally to both sides.

The PRESIDING OFFICER (Mr. Roth). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I modify my amendment by changing the word "shall" in the second line to "may."

The PRESIDING OFFICER. The amendment is so modified.

Mr. JAVITS. Mr. President, the reason for the modification is that I do not feel, with an agency of this character, that the word "shall" would have any greater meaning than the word "may" and also because I feel the Commission shoud not, in view of its purpose, be under the kind of strict timetable within the parameters, of course, that the amendment sets out that it would otherwise be if we left the word "shall" which is mandatory. We assume that they must obey the law in the amendment.

We have retained the greater good for the interest of the person aggrieved the ability to sue, which is the main point. That is being retained in the amendment as modified and I think this is the desirable way in which to proceed.

If the Senator from Colorado is satisfied I am prepared to yield back my time and allow action to take place on this amendment to the amendment.

Mr. DOMINICK. Mr. President, I yield myself 2 minutes.

I appreciate the courtesy of the Senator from New York. I think this change is very meritorious, as I pointed out in my first statement. I do not think the Commission should be mandated on what date an agency should bring suit when we are trying to work out matters the best we can by conciliation.

As a result, with the word "may" instead of "shall" and having preserved the right to the Commission to file suit and the respondent if he does not feel the Commission acted properly, it would seem proper to proceed in this way. Therefore, I have no objection to the adoption of the amendment as modified.

I yield back my time.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from New York, as modified.

The amendment, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment, as modified, was agreed to.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read the amendment to the amendment of the Senator from Colorado (Mr. Dominick), as follows:

On page 3, line 3 of the Dominick amendment strike "the respondent named in the charge" and substitute in lieu thereof: "any respondent not a government, governmental agency, or political subdivision named in the charge. In the case

Despite voluminous rhetoric to the contrary, my convictions that U.S. District Court enforcement provides employees and potential employees with the fairest, most effective redress of their grievances remain unshaken.

The most rational argument against court enforcement is the potential delay threatened by backlogged Federal courts. I acknowledge this problem and remedy it by incorporating in this amendment priority language from the same Civil Rights Act of 1964 that created the Commission. Pursuant to language contained in Title I—voting rights, Title II—public accommodations, and section 707—"Pattern or Practice," and included in this amendment, unfair employment practice suits will be accorded priorities in hearing and determination before Federal court judges. Upon certification that the case is of "general public interest," the case would be assigned for hearing and subsequent determination "at the earliest practicable date" before a three-judge panel with appeal to the Supreme Court. In the event the petitioner does not certify the case as being of general public interest, it would be assigned to a district court judge for an expedited hearing.

This newly incorporated language cures any alleged defects in the court enforcement procedures. The final result would be machinery in which the respondent's due process rights will be protected by an experienced, impartial judge relying on stare decisis while the alleged aggrieved is guaranteed an expedited hearing before a Federal forum which has in the past exhibited great compassion for minority rights.

The amendment contains several cosmetic differences from the original amendment as well as one substantial change which reduces the time period within which the Commission may file a civil action against the respondent from 180 to 150 days from the time the Commission first issues its informal charge.

The importance of this amendment should not be underestimated. As it represents my last best offer it signals, insofar as I am concerned, the final effort to resolve the court enforcement cease-and-desist issue while presenting a strong step toward salvaging the entire bill. Previous opponents of court enforcement would be well advised to consider the reasonableness of this amendment versus the very real prospect of no equal employment opportunity enforcement law at all—a most unfortunate and unnecessary consequence.

Consistent with my previous efforts on behalf of employment discrimination enforcement, I shall continue to keep an open mind concerning suggested compromises embodying substantial court enforcement machinery but I have exhausted my own resources, so the future of the bill now lies in the hands of the those who adamantly insist on cease-and-desist powers.

The PRESIDING OFFICER. The amendment will be received and printed, and will lie on the table.

Calendar No. 412

92D CONGRESS
2D SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1972

Ordered to lie on the table and to be printed

AMENDMENTS

Intended to be proposed by Mr. DOMINICK (for himself and Mr. HOLLINGS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz:

On page 38, beginning with line 7, strike all through line 7, page 50, and insert in lieu thereof the following:

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall so notify the General Council who may bring a civil action against any respondent not a government, governmental agency, or political

subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such repondent in the appropriate United States district court. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and fifty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the General Counsel has not filed a civil action under this section or the Attorney General in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon appli-

The present situation is quite a hodge-podge. As a matter of fact, it is not to the interests of the employee, nor of the employer, nor of the public that this persist as a condition. It is a disservice to the employee, because of the lack of expeditiousness which should be a very important element in any provision for dealing with a complaint on the basis of discrimination or unfairness in employment practices. It is a disservice to the employer not only on the question of expeditiousness, but also because of the burdens forced on a respondent who is called upon to defend the same case in numerous forums. And it is a disservice to the public which should be entitled to quick, clear, and certain resolutions of these questions.

Because of the number of remedies now available and those provided by this bill, there would be imposed unfairness, a great burden, and expense upon a respondent because simultaneously he could have—and there have been such instances—three or four proceedings before as many different forums pending at the same time. Each of them has the power of subpena. Each of them has the power to gather information from the employer's records and to ask for abstracts of different information, causing a heavy demand on his manpower, on his time, and on his resources. The result is often a disruption within his own business, in addition to the attorney's fees and costs involved.

This whole situation reflects badly upon the effort to induce a respondent to enter into a conciliation proceeding with a view of reaching an agreement either with the State agency or with the EEOC or with the employee himself or herself. Because of this situation we find that the benefits of the procedures that are provided are dissipated to a large degree.

Now, to correct these defects, the amendment at hand would provide that with certain named exceptions a charge filed with the Commission shall be an exclusive remedy for any person claiming to be aggrieved by a particular unlawful practice.

The amendment would remove from the scene the possibility that an individual employee can utilize the possibility of litigating two or more of the multiple actions as to a single offense, as it is now available, whether they are based on a meritorious or a nonmeritorious factual situation. Without such a provision there could conceivably be a presenting of several actions with the effect of blackmail on one or perhaps on all of them on the basis of nuisance value. That is not a good arrangement in a matter of this kind.

Mr. President, I should like to outline what can be done under the present situation in a particular case, because by doing so we can see the necessity for eliminating multiplicity to which reference has been made.

Suppose in the event of a black female employee, there is a denial of either a promotion or pay raise and there is an allegation made that it is because of her color or because of her sex. The first thing she can do is to complain to the union that it is a violation of the collective-bargaining agreement. The union will file or can file a grievance in her behalf. If the union decides that it is not meritorious, it is disallowed.

Then, of course, the employee may file charges against the union and employer with the State fair employment practice agency that invariably has the power of subpena and can call for records, correspondence, papers, and so forth.

Calendar No. 412

92d CONGRESS
2d SESSION

S. 2515

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 1972
Ordered to be printed

AMENDMENT

Proposed by Mr. DOMINICK (as a substitute to the amendment (numbered 878) proposed by Mr. WILLIAMS and Mr. JAVITS) to S. 2515, a bill to further promote equal employment opportunities for American workers, viz: Strike out the matter to be proposed and insert the following:

On page 38, beginning with line 7, strike out all through line 18 on page 47 and insert in lieu thereof:

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall so notify the General Counsel who may bring a civil action against any respondent not a govern-

Amdt. No. 884

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ment, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and fifty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the General Counsel has not filed a civil action under this section or the Attorney General in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person named in the charge as claiming to be aggrieved or (2) if such charge was filed by an officer or employee of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon appli-

cation by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) of this section or further efforts of the Commission to obtain voluntary compliance.

"(2) In any such proceeding the General Counsel or the Attorney General in a case involving a government, governmental agency, or political subdivision may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the General Counsel or the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the

presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

"(3) In the event the General Counsel or the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

"(4) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the

earliest practicable date and to cause the case to be in every way expedited.

"(5) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

"(g) (1) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of

title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

"(2) If the court finds that the respondent has engaged in or is engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, reponsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Backpay liability shall not exceed that which accrues from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable."

purposes, to make the Commission an official referee. So that, as is the practice in bankruptcy or where a special master is appointed in a given case, the case is heard, the findings of fact and conclusions of law are offered to the court, and the record is closed, except if a court desires it added to. So we felt that that was a way, especially in the big industrial centers, to cut down the time delay, and that is all our amendment is about.

For all practical purposes, we have gone over to the court method, but we have gone over to it in an effort and with a technique which can cut the timelag very materially.

Frankly, I will not—because I think it is fruitless—be drawn into an argument with the Senator from Colorado about the niceties of the practice in both of these approaches. Though he said that we file a copy of a complaint in court, I point out that that does not represent a proceeding. It represents notice to the court, and no time delay whatever is involved in that.

As to the other niceties of procedure, I do see a major difference in a dependence upon congested court calendars, whether it is a three-judge court or a one-judge court; and that is the step which we are trying to abbreviate, without in any way jeopardizing the rights of the parties who are protected before the hearing examiner by the Administrative Procedures Act and the review of the court which is bound to ensue in our case. There is no other way, because the court can issue the decree.

Again I point out that you are dealing with such long delays in the courts that justice deferred is justice denied. It is interesting to compare the time relationships to the statute itself.

Let us understand that we are dealing with a round period of approximately 150 days, that that is the allowable time for the Commission to move into a given situation. The first 30 days represents an effort to conciliate, making a total of 6 months. So that is the Commission operation. At the end of 6 months, it becomes plenary. Looking down the list of these delays in all the court cases, we find that the average is 17 months. As you go down the circuits in the individual district courts—and that is where the overwhelming majority of these cases will lodge—it is simply appalling; because in the courts where you are going to have the major cases and the congestion in the great industrial States, the delays are in excess of 18 months. In my own State of New York, for example—I say this with tears—there is a delay in the Second Circuit, in the southern district, which is the primary business district, of 35 months in civil cases.

As you go down the list, what do you find? Massachusetts, an industrial State, 19 months. New Hampshire, which is not an industrial State, 14 months. Rhode Island, another industrial State, 18 months. Connecticut, another industrial State, 27 months. The State of New York, practically all industrialized, no less than 18 months; and that is in the western district, around Buffalo; and 35 months in the southern district, which is the major district. New Jersey, an industrial State, 29 months. In Pennsylvania, a major industrial State, the least delay is in the middle district, 23 months; the most delay is in the eastern district, around Philadelphia, 41 months—probably the longest in the country. And so on as you go down the line.

As you tackle the industrial States, you find that that is where the congestion is the most severe, and that is where your problem is. It is

Mr. JAVITS. Mr. President, I wish to refer to one other matter that is important: Why the role of the Commission? I deeply believe the cease-and-desist power in these particular cases with this kind of case, and considering the condition of our courts, is absolutely essential to the best functioning of the guarantee against discrimination respecting employment.

I point out that there are many very popular agencies, with the backing of the very people who are against this kind of power for the EEOC, which have cease-and-desist powers. The Federal Trade Commission is a striking example. In addition, a number of Government departments have it. We have analyzed all of those.

If this were so iniquitous—what the Senator from Colorado calls vesting the investigative, prosecutorial, and judicial powers in the same agency—look at the situation. Thirty-four States have authority analogous to this authority in their State establishments in which they seek to correct discrimination in employment. I think that is the weight of the evidence.

As to the generic case for administrative agencies and administrative law, I think the courts themselves would be the most violent opponents of any effort to dismantle that machinery. They know it would crush and destroy them. They could not survive with the inundation that would result unless we changed the court system and tripled or quadrupled the number of judges. Unless that were done we would be lost. I do not need to argue that case here and now, but that is the situation we are inviting.

The last point I wish to make is that the three-judge court idea is not new and is not something that the Senator from Colorado is giving us in this amendment. It is in the law now. A three-judge court may be convened at the request of the Attorney General, and that is contained at page 64 of the committee report, setting forth section 707(b) of the statute.

In short, Mr. President, we would be departing from the classic way in which to enforce these rights.

Now that we have filed our amendment the question is: Which of the two methodologies is preferred? We hope there is a way to deal with this crushing burden on the court process. The plan of the Senator from Colorado does not deal with that at all. Perhaps the idea of the Senator from Kentucky would be the right one, but I have no feeling about it. However, the Dominick amendment just throws the cases into the courts, and there are bound to be many cases. The backlog amendment works against the Dominick amendment rather than for it. It would throw the cases into the courts, to sink or swim, with tremendous congestion on the court calendars. If our amendment is imperfect we can change it, but we tried to provide a time relation through time intervals in the law of 1 or 6 months.

The time intervals defined in the Dominick amendment refers to the earliest practical date. Based on the tremendous congestion in the courts, that would be 10 months, even by his amendment, against 6 months, which is the maximum bracket of the Commission.

Mr. President, for all those reasons I adhere to my original view. I am sorry my beloved friend does not agree with me but we agree so often there would be something wrong with one of us if we did not

If no Senator yields time, it will be charged equally to both sides.

Mr. JAVITS. Mr. President, I ask unanimous consent that we may have a quorum call, with the time charged equally to both sides.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMINICK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMINICK. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. DOMINICK. I yield myself those 3 minutes.

Mr. President, during the process of this debate, reference has been made to the comparable cease-and-desist powers that are in the NLRB. The other executive agencies are largely, I would say, regulatory agencies, as opposed to the EEOC or the NLRB.

I think it is a matter of interest that before the Special Subcommittee on Labor in the other body hearings were held on proposals to expedite the NLRB processes. Those hearings, it should be noted, brought out the point that it could take 2½ years from the time a worker walks into a regional NLRB office with a charge until the time a court of appeals finally issues an order that he be reinstated with or without back pay. So it seems perfectly apparent that even in an agency that has been established that long, which has hearing examiners, an independent General Counsel, special expertise and all its precedents, it still takes 2½ years.

I do not think that this would be true under job discrimination with the adoption of my amendment, because once the trial is over, the court at that point is free to issue injunctive relief and to issue such other remedies as it may deem appropriate, or even, to dismiss the case, if it determines that the evidence has not supported the complainant.

In summary what we are doing, is asking for enforcement for the EEOC through the court system, through an expedited three-judge court where the case is of general public interest, so that there can be expedited proceedings with appeal directly to the Supreme Court. Where the case is not of general public interest will be brought into district court for expedited hearings, and once the decision has been made, the judge who has jurisdiction can issue whatever remedy seems suitable in view of the facts before him.

It avoids the conglomeration of powers in one executive agency of the prosecution, the investigation, the judicial hearing, and the enforcement proceeding—all of which put into one body are wrong, be it the EEOC or the NLRB.

So I urge the adoption of my amendment.

CIVIL RIGHTS AND THE NEED FOR ENFORCEMENT OF FAIR EMPLOYMENT PRACTICES

Mr. MOSS. Mr. President, the struggle to expand equality in America has had a long journey. The path is marked by periodic accomplishments that have advanced rights that should have been

The VICE PRESIDENT. All time on the amendment has expired.

Under the previous order, the question is on agreeing to the amendment of the Senator from Colorado to the amendment of the Senator from New York and the Senator from New Jersey. On this question the yeas and nays have been ordered.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The VICE PRESIDENT. Without objection, it is so ordered.

The question is on agreeing to the amendment of the Senator from Colorado (Mr. Dominick) (No. 884) to the amendment of the Senator from New York (Mr. Javits) and the Senator from New Jersey (Mr. Williams).

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. TAFT (when his name was called). On this vote I have a pair with the distinguished Senator from Wyoming (Mr. Hansen). If he were present and voting, he would vote "yea;" if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. FULBRIGHT (after having voted in the affirmative). On this vote I have a pair with the distinguished Senator from Maine (Mr. Muskie). If he were present and voting, he would vote "nay;" if I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the distinguished Senator from Georgia (Mr. Talmadge). If he were present and voting, he would vote "yea;" if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. Anderson), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), and the Senator from Maine (Mr. Muskie) are necessarily absent.

I further announce that the Senator from Georgia (Mr. Talmadge) and the Senator from Massachusetts (Mr. Kennedy) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), and the Senator from Washington (Mr. Magnuson) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fong), the Senator from Wyoming (Mr. Hansen), and the Senators from Oregon (Mr. Hatfield and Mr. Packwood) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Hawaii (Mr. Fong) and the Senator from Oregon(Mr. Hatfield) would each vote "nay."

The pair of the Senator from Wyoming (Mr. Hansen) has been previously announced.

The result was announced—yeas 45, nays 39, as follows:

[No. 45 Leg.]

YEAS—45

Aiken	Cooper	Jordan, N.C.
Allen	Cotton	Jordan, Idaho
Allott	Curtis	Long
Baker	Dole	McClellan
Bellmon	Dominick	Miller
Bennett	Eastland	Roth
Bentsen	Ellender	Saxbe
Bible	Ervin	Smith
Brock	Fannin	Sparkman
Buckley	Gambrell	Spong
Byrd, Va.	Goldwater	Stennis
Byrd, W. Va.	Griffin	Thurmond
Cannon	Gurney	Tower
Chiles	Hollings	Weicker
Cook	Hruska	Young

NAYS—39

Bayh	Inouye	Pell
Beall	Javits	Percy
Boggs	Mathias	Proxmire
Brooke	McGee	Randolph
Burdick	McGovern	Ribicoff
Case	McIntyre	Schweiker
Church	Metcalf	Scott
Cranston	Mondale	Stafford
Eagleton	Montoya	Stevens
Gravel	Moss	Symington
Harris	Nelson	Tunney
Hart	Pastore	Williams
Hughes	Pearson	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

Fulbright, for.
Mansfield, against.
Taft, against.

NOT VOTING—13

Anderson	Humphrey	Muskie
Fong	Jackson	Packwood
Hansen	Kennedy	Talmadge
Hartke	Magnuson	
Hatfield	Mundt	

So Mr. Dominick's amendment (No. 884) to the amendment of the Senator from New York (Mr. Javits) and the Senator from New Jersey (Mr. Williams) was agreed to.

Mr. MILLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMINICK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROGRAM

Mr. MANSFIELD. Mr. President, at this time I would like to ask the distinguished Senator from Louisiana a question. Would it be possible to take up the debt ceiling measure which I understand needs consideration immediately, even if it meant delaying the reporting of H.R. 1 by 1, 2, or 3 days?

Mr. LONG. The committee has scheduled hearings on H.R. 1. We have scheduled hearings for the day after tomorrow, which is Thurs-

circumstances I could not give it any consideration, because we have gone this far. We ought to try at least once more. Then after that it will be up to the joint leadership to decide what should or should not be done about the pending legislation. But I hope this time cloture will prevail, and I hope to be one of the signers of the cloture motion.

Mr. RANDOLPH. Mr. President, if the Senator will yield, as long as we are talking about future dates, can the majority leader tell us if there is to be any business from the standpoint of possible votes in the Senate on the observance of Washington's birthday next Monday?

Mr. MANSFIELD. The answer is "Yes."

Mr. President, the Senator from Colorado has the floor.

Mr. COTTON. Mr. President, if the Senator will yield. I am thoroughly aware of the fact that we cannot please every Senator, but would 10 o'clock be as good for Wednesday?

Mr. MANSFIELD. Ten o'clock would be agreeable, if a motion is laid before the Senate.

Now I think I ought to yield to the Senator from New York, who has an amendment.

The PRESIDING OFFICER. The question recurs on amendment No. 878, as amended.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is the Williams-Javits amendment now any further amendable?

The PRESIDING OFFICER. No.

Mr. JAVITS. And the text of it now is what was the Dominick amendment?

The PRESIDING OFFICER. That is correct.

Mr. JAVITS. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. Not yet.

Mr. JAVITS. I see no necessity for them. I hope we will have a voice vote.

Mr. ERVIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Williams-Javits amendment, as amended. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. Anderson), the Senator from Oklahoma (Mr. Harris), the Senator from Indiana (Mr. Hartke), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Jackson), the Senator from Washington (Mr. Magnuson), the Senator from South Dakota (Mr. McGovern), the Senator from Maine (Mr. Muskie), and the Senator from Alaska (Mr. Gravel) are necessarily absent.

I further announce that the Senator from Georgia (Mr. Talmadge) and the Senator from Massachusetts (Mr. Kennedy) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. Magnuson), the Senator from Washington (Mr. Jackson), and the Senator from Minnesota (Mr. Humphrey) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. Fong), the Senator from Wyoming (Mr. Hansen), and the Senators from Oregon (Mr. Hatfield and Mr. Packwood) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Wyoming (Mr. Hansen) would vote "yea."

The result was announced—yeas 81, nays 3, as follows:

[No. 46 Leg.]

YEAS—81

Aiken	Dominick	Nelson
Allen	Eagleton	Pastore
Allott	Eastland	Pearson
Baker	Ellender	Pell
Bayh	Ervin	Percy
Beall	Fannin	Proxmire
Bellmon	Fulbright	Randolph
Bennett	Gambrell	Ribicoff
Bentsen	Goldwater	Roth
Bible	Griffin	Saxbe
Boggs	Gurney	Schweiker
Brock	Hollings	Scott
Brooke	Hruska	Smith
Buckley	Hughes	Sparkman
Burdick	Javits	Spong
Byrd, Va.	Jordan, N.C.	Stafford
Byrd, W. Va.	Jordan, Idaho	Stennis
Cannon	Long	Stevens
Case	Mansfield	Stevenson
Chiles	Mathias	Symington
Church	McClellan	Taft
Cook	McGee	Thurmond
Cooper	McIntyre	Tower
Cotton	Miller	Tunney
Cranston	Mondale	Weicker
Curtis	Montoya	Williams
Dole	Moss	Young

NAYS—3

Hart	Inouye	Metcalf

NOT VOTING—16

Anderson	Hatfield	Mundt
Fong	Humphrey	Muskie
Gravel	Jackson	Packwood
Hansen	Kennedy	Talmadge
Harris	Magnuson	
Hartke	McGovern	

So the Williams-Javits amendment (No. 878), as amended, was agreed to.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HRUSKA. Mr. President, I call up my amendment No. 834—

Mr. DOMINICK. Mr. President, will the Senator from Nebraska yield? I have some technical amendments which really do nothing

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—23

Anderson	Gravel	Mondale
Brock	Hansen	Moss
Buckley	Hartke	Mundt
Chiles	Hughes	Muskie
Cooper	Humphrey	Stevens
Fannin	Jackson	Taft
Fong	Kennedy	Talmadge
Fulbright	McGovern	

So Mr. Hruska's amendment (No. 834) was rejected.

Mr. WILLIAMS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SCOTT. Mr. President, may I inquire as to whether we are under controlled time?

The PRESIDING OFFICER. We are not under controlled time.

Mr. SCOTT. Then I ask unanimous consent to proceed for 3 minutes on another matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

* * * * * * *

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. HOLLINGS. Mr. President, I wish to address some remarks to the equal employment opportunities bill. Yesterday, by a vote of 45 to 39, the Senate accepted the Dominick amendment to the equal employment opportunities bill. As a sponsor of the original Dominick amendment, as well as the one that was adopted, I can attest to the fact that this acceptance has not been easy.

On January 24 and again on January 26, a similar amendment was defeated by a narrow 2-vote margin. However, by now accepting this amendment and denying cease-and-desist power to the Equal Employment Opportunity Commission, we have guaranteed that the Commission will not be a special interest group arrogating to itself the roles of indicator, prosecutor, judge and jury.

Rather, we have assured that the Commission will be able to turn to the Federal court for review of its actions. By prevailing for a judicial procedure, we have assured to the employer that he will not be unconscionably harassed.

Most importantly, we have guaranteed to minorities an effective means of achieving equal job opportunities. And this equal opportunity is, after all, what must be accomplished.

Mr. President, I ask unanimous consent to have printed in the Record a letter from the Honorable Arthur M. Williams, Jr., president of the South Carolina Electric and Gas Co. and a company policy memorandum.

There being no objection, the material was ordered to be printed in the Record, as follows:

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SECTION 14

This section provides that no government contract, or portion thereof, can be denied, withheld, terminated, or superseded by a government agency under the Executive Order 11246 or any other order of law without according the respective employer a full hearing and adjudication pursuant to 5 U.S.C. § 554 et seq. where such employer has an affirmative action program for the same facility which had been accepted by the Government within the prior twelve months. Such plan shall be deemed to be accepted by the Government if the appropriate compliance agency has accepted such plan and the Office of Federal Contract Compliance has not disapproved of such plan within 40 days. However, an employer who substantially deviates from the previously accepted plan is excluded from the protection afforded by this section.

The PRESIDING OFFICER. The question now is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question now is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on final passage of S. 2515. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from Indiana (Mr. Hartke), the Senator from Washington (Mr. Jackson), the Senator from Arkansas (Mr. McClellan), the Senator from South Dakota (Mr. McGovern), the Senator from Maine (Mr. Muskie), and the Senator from Arkansas (Mr. Fulbright) are necessarily absent.

I further announce that, if present and voting, the Senator from Arkansas (Mr. Fulbright), the Senator from Washington (Mr. Jackson), the Senator from South Dakota (Mr. McGovern), and the Senator from Maine (Mr. Muskie) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. Baker) is absent by leave of the Senate on official committee business.

The Senator from Wyoming (Mr. Hansen) and the Senator from Iowa (Mr. Miller) are necessarily absent.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

The result was announced—yeas 73, nays 16, as follows:

[No. 56 Leg.]

YEAS—73

Aiken	Fong	Nelson
Allott	Gambrell	Packwood
Anderson	Gravel	Pastore
Beall	Griffin	Pearson
Bellmon	Gurney	Pell
Bennett	Harris	Percy
Bentsen	Hart	Proxmire
Bible	Hatfield	Randolph
Boggs	Hollings	Ribicoff
Brooke	Hruska	Roth
Buckley	Hughes	Saxbe
Burdick	Humphrey	Schweiker
Byrd, W. Va.	Inouye	Scott
Cannon	Javits	Smith
Case	Jordan, Idaho	Spong
Chiles	Kennedy	Stafford
Church	Magnuson	Stevens
Cook	Mansfield	Stevenson
Cooper	Mathias	Symington
Cotton	McGee	Taft
Cranston	McIntyre	Tunney
Curtis	Metcalf	Weicker
Dole	Mondale	Williams
Dominick	Montoya	
Eagleton	Moss	

NAYS—16

Allen	Fannin	Talmadge
Brock	Goldwater	Thurmond
Byrd, Va.	Jordan, N.C.	Tower
Eastland	Long	Young
Ellender	Sparkman	
Ervin	Stennis	

NOT VOTING—11

Baker	Hartke	Miller
Bayh	Jackson	Mundt
Fulbright	McClellan	Muskie
Hansen	McGovern	

So the bill (S. 2515) was passed, as follows:

S. 2515

An act to further promote equal employment opportunities for American workers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1961 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

92D CONGRESS } SENATE { REPORT
2d Session } { No. 92-681

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972

MARCH 2, 1972.—Ordered to be printed

Mr. WILLIAMS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 1746]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1746) An Act to further promote equal employment opportunities for American workers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Equal Employment Opportunity Act of 1972".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(1) In subsection (a) insert "governments, governmental agencies, political subdivisions," after the word "individuals".

(2) Subsection (b) is amended to read as follows:

"(b) The term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 of the United States Code), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal

the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision,

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